

32 Am. Jur. 2d False Imprisonment Summary

American Jurisprudence, Second Edition | May 2021 Update

False Imprisonment
John Bourdeau, J.D.

Correlation Table

Summary

Scope:

This article discusses false imprisonment or false arrest as a tort or crime (also denominated as false detention, unlawful restraint or unlawful confinement), treating such matters as the nature and elements of the wrong, liability, defenses, procedural issues, and damages.

Treated Elsewhere:

Admiralty jurisdiction, false detainer or arrest as within, see [Am. Jur. 2d, Admiralty § 70](#)

Arrest, generally, see [Am. Jur. 2d, Arrest §§ 1 et seq.](#)

Assignability of cause of action for false imprisonment, see [Am. Jur. 2d, Assignments § 56](#)

Carriers, liability for arrest and false imprisonment, see [Am. Jur. 2d, Carriers §§ 1166 to 1180](#)

Charitable immunity with regard to false imprisonment, see [Am. Jur. 2d, Charities § 198](#)

Choice of law in determining plaintiff's right to recover in action for false imprisonment, see [Am. Jur. 2d, Conflict of Laws § 121](#)

Falsely representing oneself as officer, agent, or employee of United States, arrest or detention of person by one, as federal offense, see [Am. Jur. 2d, False Personation §§ 1 et seq.](#)

Federal Tort Claims Act, exclusion of claim arising out of false imprisonment or false arrest, but allowance of actions based on acts or omissions of investigative or law enforcement officers, see [Am. Jur. 2d, Federal Tort Claims Act § 91](#)

Insurance coverage of liability for false arrest, see [Am. Jur. 2d, Insurance §§ 422, 1538](#)

Interest as element of damages in action for false imprisonment, see [Am. Jur. 2d, Damages § 487](#)

Jones Act, false arrest and false imprisonment not within coverage of, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts § 41](#)

Parent's right of action for false imprisonment of child, see [Am. Jur. 2d, Parent and Child § 117](#)

State or local government entities' liability for false arrest or imprisonment, see [Am. Jur. 2d, Municipal, County, School, and](#)

[State Tort Liability § 143](#)

Sureties on official bonds, liability for false imprisonment or unlawful arrest by police officers, see [Am. Jur. 2d, Sheriffs, Police, and Constables § 84](#)

Workers' compensation acts, false imprisonment action as generally not barred by, see [Am. Jur. 2d, Workers' Compensation § 74](#)

Wrongful conviction and incarceration as basis for liability to prison inmates, see [Am. Jur. 2d, Penal and Correctional Institutions §§ 185, 186](#)

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A. Definitions and Distinctions

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West's Key Number Digest

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32 Am. Jur. 2d False Imprisonment § 1

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False Imprisonment
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I. Civil Actions

A. Definitions and Distinctions

1. In General

§ 1. Definition of false imprisonment in civil actions

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  2

Forms

Forms relating to definitions, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\)](#) [Search Query](#)]

False imprisonment is the unlawful restraint by one person of the physical liberty¹ or personal liberty² of another, without consent³ or legal justification.⁴ In this phrase, the word “false” seems to be exactly synonymous with “unlawful,”⁵ and the gravamen of the action lies in the unlawful detention⁶ or restraint.⁷

The tort of false imprisonment exists to protect and vindicate an individual’s interest in freedom from unwarranted interference with that person’s personal liberty.⁸ It protects personal freedom of movement by curtailing detention without color of legal authority.⁹

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Footnotes

¹ Russo v. City of Bridgeport, 479 F.3d 196 (2d Cir. 2007) (applying Connecticut law); Nodoushani v. Southern Connecticut State University, 152 Conn. App. 84, 95 A.3d 1248, 307 Ed. Law Rep. 337 (2014); City Of St. Petersburg v. Austrino, 898 So. 2d 955 (Fla. 2d DCA 2005).

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² [Jon Davler, Inc. v. Arch Insurance Company](#), 229 Cal. App. 4th 1025, 178 Cal. Rptr. 3d 502 (2d Dist. 2014), as modified, (Sept. 15, 2014).

³ [Torrez v. Knowlton](#), 205 Ariz. 550, 73 P.3d 1285 (Ct. App. Div. 2 2003); [Ali v. Alliance Home Health Care, LLC](#), 53 N.E.3d 420 (Ind. Ct. App. 2016); [State v. Roshchin](#), 446 Md. 128, 130 A.3d 453 (2016); [Davis v. Prosperity Bank](#), 383 S.W.3d 795 (Tex. App. Houston 14th Dist. 2012).

As to consent as a defense, see § 53.

⁴ [Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Sec., Div. of Delaware State Police](#), 69 A.3d 360, 295 Ed. Law Rep. 180 (Del. 2013); [State v. Roshchin](#), 446 Md. 128, 130 A.3d 453 (2016); [Leang v. Jersey City Bd. of Educ.](#), 198 N.J. 557, 969 A.2d 1097 (2009).

⁵ [Stine v. Shuttle](#), 134 Ind. App. 67, 186 N.E.2d 168 (1962).

⁶ [Bradshaw v. District of Columbia](#), 43 A.3d 318 (D.C. 2012).

The requirement that the detention be unlawful is further discussed in § 21.

⁷ [Carr v. City of Hillsboro](#), 497 F. Supp. 2d 1197, 223 Ed. Law Rep. 670 (D. Or. 2007) (applying Oregon law); [Singh v. McLaughlin](#), 255 Or. App. 340, 297 P.3d 514 (2013).

⁸ [Phillips v. District of Columbia](#), 458 A.2d 722 (D.C. 1983).

⁹ [Harder v. Edwards](#), 174 So. 3d 524 (Fla. 4th DCA 2015).

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32 Am. Jur. 2d False Imprisonment § 2

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

A. Definitions and Distinctions

1. In General

§ 2. Definition of false arrest in civil actions

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  2

Forms

Forms relating to definitions, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\)](#) [Search Query](#)]

False arrest, a name sometimes given to the tort more generally known as false imprisonment,¹ has been defined as the unlawful restraint by one person of the physical liberty of another² by acting to cause a false arrest, that is, an arrest made without legal authority,³ or without sufficient legal authority,⁴ resulting in an injury.⁵ The claim usually arises from being unlawfully imprisoned through some extrajudicial act that does not amount to legal process,⁶ such as an unlawful detention by the police,⁷ or an arrest pursuant to a void legal process.⁸ However, the tort of false arrest does not require a formal arrest, but a manifest intent to take someone into custody and subject that person to the defendant's control.⁹ For false arrest to give rise to a cause of action, there is no requirement that the arrest be formal, that the detention be for the purpose of arraignment, or that the detention continue until presentation to a judicial officer.¹⁰

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Footnotes

¹ [Trammell v. Wright](#), 2016 Ark. 147, 489 S.W.3d 636 (2016); [Highfill v. Hale](#), 186 S.W.3d 277 (Mo. 2006).

² [Russo v. City of Bridgeport](#), 479 F.3d 196 (2d Cir. 2007) (applying Connecticut law); [Nodoushani v. Southern](#)

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Connecticut State University, 152 Conn. App. 84, 95 A.3d 1248, 307 Ed. Law Rep. 337 (2014).

³ Stern v. Thompson & Coates, Ltd., 185 Wis. 2d 220, 517 N.W.2d 658 (1994).

⁴ Ratliff v. City of Shannon Hills, 52 F. Supp. 3d 904 (E.D. Ark. 2014), appeal dismissed, 616 Fed. Appx. 217 (8th Cir. 2015) (applying Arkansas law); Trammell v. Wright, 2016 Ark. 147, 489 S.W.3d 636 (2016).

⁵ Zimbelman v. Savage, 745 F. Supp. 2d 664 (D.S.C. 2010) (applying South Carolina law); Landry v. Duncan, 902 So. 2d 1098 (La. Ct. App. 5th Cir. 2005).

⁶ Snodderly v. R.U.F.F. Drug Enforcement Task Force, 239 F.3d 892 (7th Cir. 2001); Dumas v. City of New Orleans, 803 So. 2d 1001, 161 Ed. Law Rep. 713 (La. Ct. App. 4th Cir. 2001), writ denied, 811 So. 2d 912 (La. 2002).

⁷ Heaney v. Roberts, 846 F.3d 795 (5th Cir. 2017) (applying Louisiana law); Dumas v. City of New Orleans, 803 So. 2d 1001, 161 Ed. Law Rep. 713 (La. Ct. App. 4th Cir. 2001), writ denied, 811 So. 2d 912 (La. 2002).

⁸ Ruble v. Escola, 898 F. Supp. 2d 956 (N.D. Ohio 2012) (applying Ohio law).

⁹ Cooper v. Dyke, 814 F.2d 941 (4th Cir. 1987).

¹⁰ Day v. Wells Fargo Guard Service Co., 711 S.W.2d 503 (Mo. 1986).

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32 Am. Jur. 2d False Imprisonment § 3

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False Imprisonment
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I. Civil Actions

A. Definitions and Distinctions

1. In General

§ 3. Distinction between false imprisonment and false arrest in civil actions

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West's Key Number Digest

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Some courts have stated that false arrest and false imprisonment are distinguishable only in terminology.¹ The two have been called virtually indistinguishable² and identical.³ It has also been said that false arrest is a species⁴ or variant⁵ of false imprisonment, or that they are separate causes of action that share the same elements.⁶ The gist of either tort is the unlawful detention.⁷ The difference between them lies in the manner in which they arise.⁸ False arrest is one of several means of committing false imprisonment.⁹ To commit false imprisonment, it is not necessary either to intend to make an arrest¹⁰ or actually to make an arrest.¹¹ By contrast, a person who is falsely arrested is at the same time falsely imprisoned,¹² and an unlawful arrest may give rise to a cause of action for either false arrest or false imprisonment.¹³ Thus, it has been stated that false arrest and false imprisonment are not separate torts,¹⁴ and that a false arrest is one way to commit false imprisonment;¹⁵ since an arrest involves a restraint, it always involves imprisonment.¹⁶ In other words, a false imprisonment occurs whenever a false arrest occurs.¹⁷ On the other hand, false imprisonment is the broader tort,¹⁸ and a person improperly detained pursuant to a lawful arrest may have the right to bring an action for false imprisonment, but not for false arrest.¹⁹

Absent an “arrest,” there can be no false arrest.²⁰ Thus, an individual subject to a warrant who voluntarily surrenders is not subject to a false arrest.²¹

False arrest and wrongful detention, both actions for false imprisonment,²² constitute a continuing tort encompassing both the unlawful arrest and detention of the arrested person.²³ Both torts encompass the right to be free from being arrested without probable cause.²⁴

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Footnotes

¹ *Johnson v. Weiner*, 155 Fla. 169, 19 So. 2d 699 (1944); *Holland v. Lutz*, 194 Kan. 712, 401 P.2d 1015 (1965).

2 [Logsdon v. Hains](#), 492 F.3d 334 (6th Cir. 2007) (applying Ohio law); [Carter v. Diamond URS Huntsville, LLC](#), 175 F. Supp. 3d 711 (S.D. Tex. 2016) (applying Texas law); [Bradshaw v. District of Columbia](#), 43 A.3d 318 (D.C. 2012).

3 [Zainc v. City of Waterbury](#), 603 F. Supp. 2d 368 (D. Conn. 2009); [Pegues v. Wal-Mart Stores, Inc.](#), 63 F. Supp. 3d 539 (D. Md. 2014) (applying Maryland law); [McCarthy v. Barrett](#), 804 F. Supp. 2d 1126 (W.D. Wash. 2011) (applying Washington law).

4 [Sorrell v. County of Nassau](#), 162 F. Supp. 3d 156 (E.D. N.Y. 2016) (applying New York law); [Bonkowski v. Arlan's Dept. Store](#), 12 Mich. App. 88, 162 N.W.2d 347 (1968), judgment rev'd on other grounds, 383 Mich. 90, 174 N.W.2d 765 (1970).

5 [Slack v. County of Suffolk](#), 50 F. Supp. 3d 254 (E.D. N.Y. 2014) (applying New York law).

6 [State v. Dett](#), 391 Md. 81, 891 A.2d 1113 (2006).

7 [Barnhardt v. District of Columbia](#), 723 F. Supp. 2d 197 (D.D.C. 2010) (applying District of Columbia law); [Spears v. Albertson's, Inc.](#), 848 So. 2d 1176 (Fla. 1st DCA 2003).

8 [Harrer v. Montgomery Ward & Co.](#), 124 Mont. 295, 221 P.2d 428 (1950); [Bender v. City of Seattle](#), 99 Wash. 2d 582, 664 P.2d 492 (1983).

9 [Rife v. D.T. Corner, Inc.](#), 641 N.W.2d 761 (Iowa 2002).

10 [Harrer v. Montgomery Ward & Co.](#), 124 Mont. 295, 221 P.2d 428 (1950); [Hepworth v. Covey Bros. Amusement Co.](#), 97 Utah 205, 91 P.2d 507 (1939).

11 [S. H. Kress & Co. v. Bradshaw](#), 1940 OK 70, 186 Okla. 588, 99 P.2d 508 (1940); [Hepworth v. Covey Bros. Amusement Co.](#), 97 Utah 205, 91 P.2d 507 (1939).

12 [McGlone v. Landreth](#), 1948 OK 85, 200 Okla. 425, 195 P.2d 268 (1948) (overruled in part on other grounds by, [Parker v. Washington](#), 1966 OK 263, 421 P.2d 861 (Okla. 1966)); [Hepworth v. Covey Bros. Amusement Co.](#), 97 Utah 205, 91 P.2d 507 (1939).

13 [Stallings v. Foster](#), 119 Cal. App. 2d 614, 259 P.2d 1006 (3d Dist. 1953).

14 [Carr v. City of Hillsboro](#), 497 F. Supp. 2d 1197, 223 Ed. Law Rep. 670 (D. Or. 2007) (applying Oregon law); [Gillan v. City of San Marino](#), 147 Cal. App. 4th 1033, 55 Cal. Rptr. 3d 158 (2d Dist. 2007), as modified on denial of reh'g, (Feb. 21, 2007).

15 [Gillan v. City of San Marino](#), 147 Cal. App. 4th 1033, 55 Cal. Rptr. 3d 158 (2d Dist. 2007), as modified on denial of reh'g, (Feb. 21, 2007); [Santillo v. N.M. Dept. of Public Safety](#), 143 N.M. 84, 2007-NMCA-159, 173 P.3d 6 (Ct. App. 2007).

16 [Schroeder v. Lufthansa German Airlines](#), 875 F.2d 613, 53 Ed. Law Rep. 1095 (7th Cir. 1989); [George v. City of Long Beach](#), 973 F.2d 706 (9th Cir. 1992); [Children v. Burton](#), 331 N.W.2d 673 (Iowa 1983).

17 [Youker v. Douglas County](#), 162 Wash. App. 448, 258 P.3d 60 (Div. 3 2011).

But see [Strei v. Blaine](#), 996 F. Supp. 2d 763 (D. Minn. 2014), in which the court states that, under Minnesota law, an arrest made without proper legal authority is a false arrest, and any subsequent restraint is false imprisonment.

18 [Valdez v. U.S.](#), 58 F. Supp. 3d 795 (W.D. Mich. 2014) (applying Michigan law); [Moore v. City of Detroit](#), 252 Mich. App. 384, 652 N.W.2d 688 (2002).

19 [Ogulin v. Jeffries](#), 121 Cal. App. 2d 211, 263 P.2d 75 (3d Dist. 1953).

20 [Bonkowski v. Arlan's Dept. Store](#), 383 Mich. 90, 174 N.W.2d 765 (1970) (holding that there had been no "arrest" where a store guard called back a customer).

21 [Grandjean v. Grandjean](#), 315 Ark. 620, 869 S.W.2d 709 (1994).

22 Cowdrey v. City of Eastborough, Kan., 730 F.2d 1376 (10th Cir. 1984).

23 Santiago v. Fenton, 891 F.2d 373 (1st Cir. 1989).

24 Bradway v. Gonzales, 26 F.3d 313, 29 Fed. R. Serv. 3d 997 (2d Cir. 1994).

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32 Am. Jur. 2d False Imprisonment § 4

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False Imprisonment

John Bourdeau, J.D.

I. Civil Actions

A. Definitions and Distinctions

2. Related Torts

§ 4. Relation of malicious prosecution to false imprisonment or arrest in civil actions

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  3

Malicious prosecution arises out of the wrongful commencement of a judicial proceeding, while false imprisonment occurs when there is an improper restraint which is not the result of a judicial proceeding.¹ Furthermore, the essential difference between false imprisonment and malicious prosecution is the validity of the legal authority for the restraint imposed; a false imprisonment action may be maintained where the imprisonment is without legal authority, but where there is a valid or apparently valid power to arrest, the remedy is an action for malicious prosecution.² Usually, there is not a cause of action for false arrest or imprisonment if the arrest was pursuant to a warrant³ and indictment,⁴ or was otherwise regular⁵ and legal.⁶ Conversely, in false imprisonment, the detention is unlawful, but malice and lack of probable cause are generally not essential.⁷ Thus, where the process on which an arrest is made is regular and legal in form and issued by a court of competent authority, but issued maliciously and without probable cause, the remedy is an action for malicious prosecution.⁸

Observation:

According to some courts, probable cause for malicious prosecution is different from probable cause for false arrest.⁹

In other words, when there is an alleged unlawful arrest made pursuant to a valid warrant, the appropriate form of action is malicious prosecution, not false imprisonment.¹⁰ However, a suit for false arrest or imprisonment is the proper action where the aggrieved party is arrested without legal authority,¹¹ as where one is arrested pursuant to process that is void.¹² Under this theory, false arrest, not malicious prosecution, is the gist of the action if an informant obtains a warrant based on false

information.¹³

The elements of malicious prosecution include the termination of a criminal action in a plaintiffs' favor, but termination is not an element of false arrest.¹⁴

While false arrest and malicious prosecution are kindred actions, each protects a different personal interest.¹⁵ Thus, according to some courts, the involvement of false imprisonment and malicious prosecution in successive events does not merge the wrongs inflicted, or deprive a plaintiff of the right to recover damages for each offense.¹⁶ The tort of malicious prosecution is entirely distinct from that of false arrest¹⁷ or false imprisonment.¹⁸ According to other courts, however, the causes of action may merge where an arrest results in a malicious prosecution.¹⁹ Thus, an action for false arrest is barred if an arrest is carried into prosecution, and an action for malicious prosecution is then the exclusive remedy.²⁰ Malicious prosecution and malicious arrest are mutually exclusive.²¹ A claim of false arrest covers the time period from arrest through arraignment, after which time the claim becomes one for malicious prosecution.²²

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Footnotes

¹ *Eiras v. Florida*, 2017 WL 897305 (M.D. Fla. 2017) (applying Florida law).

² *Smith v. Stokes*, 54 S.W.3d 565 (Ky. Ct. App. 2001).

³ *Goodwin v. Barry Miller Chevrolet, Inc.*, 543 So. 2d 1171 (Ala. 1989); *Ruggerio v. New York Racing Ass'n, Inc.*, 14 A.D.3d 976, 788 N.Y.S.2d 515 (3d Dep't 2005).

⁴ *Diaz-Nieves v. U.S.*, 128 F. Supp. 3d 449 (D.P.R. 2015), aff'd, 858 F.3d 678 (1st Cir. 2017) (applying Puerto Rico law).

⁵ *Eiras v. Florida*, 2017 WL 897305 (M.D. Fla. 2017) (applying Florida law).

⁶ *Donahoe v. Arpaio*, 869 F. Supp. 2d 1020 (D. Ariz. 2012), stay pending appeal denied, 2012 WL 2063455 (D. Ariz. 2012) and aff'd, 733 F.3d 804 (9th Cir. 2013) (applying Arizona law); *Eiras v. Florida*, 2017 WL 897305 (M.D. Fla. 2017) (applying Florida law).

⁷ *Stallings v. Foster*, 119 Cal. App. 2d 614, 259 P.2d 1006 (3d Dist. 1953); *Kredit v. Ryan*, 68 S.D. 274, 1 N.W.2d 813 (1942).

⁸ *Adams v. Metiva*, 31 F.3d 375, 1994 FED App. 0277P (6th Cir. 1994); *Reed v. City and County of Honolulu*, 76 Haw. 219, 873 P.2d 98 (1994); *Page v. Wiggins*, 595 So. 2d 1291 (Miss. 1992).

⁹ *Ying Li v. City of New York*, 2017 WL 1208422 (E.D. N.Y. 2017) (applying New York law).

¹⁰ *Washington-Herrera v. Town of Greenburgh*, 101 A.D.3d 986, 956 N.Y.S.2d 487 (2d Dep't 2012).

¹¹ *Coffman v. Shell Petroleum Corp.*, 228 Mo. App. 727, 71 S.W.2d 97 (1934); *Kredit v. Ryan*, 68 S.D. 274, 1 N.W.2d 813 (1942).

¹² *Duboue v. City of New Orleans*, 909 F.2d 129 (5th Cir. 1990); *Ruble v. Escola*, 898 F. Supp. 2d 956 (N.D. Ohio 2012) (under Ohio law).

¹³ *Ruggerio v. New York Racing Ass'n, Inc.*, 14 A.D.3d 976, 788 N.Y.S.2d 515 (3d Dep't 2005).

¹⁴ *Diaz-Colon v. Toledo-Davila*, 922 F. Supp. 2d 189 (D.P.R. 2013).

¹⁵ *McLennon v. City of New York*, 171 F. Supp. 3d 69 (E.D. N.Y. 2016).

¹⁶ *Vernon v. Plumas Lumber Co.*, 71 Cal. App. 112, 234 P. 869 (3d Dist. 1925); *Ira v. Columbia Food Co.*, 226 Or. 566, 360 P.2d 622, 86 A.L.R.2d 1378 (1961).

- 17 Robertson v. Lucas, 753 F.3d 606 (6th Cir. 2014).
- 18 Harrington v. City of Nashua, 610 F.3d 24 (1st Cir. 2010).
- 19 Schwane v. Kroger Co., 480 S.W.2d 113 (Mo. Ct. App. 1972).
- 20 Pombert v. Glock, Inc., 171 F. Supp. 3d 1321 (N.D. Ga. 2016) (applying Georgia law).
- 21 Stephens v. Zimmerman, 333 Ga. App. 586, 774 S.E.2d 811 (2015).
- 22 Marcano v. City of Schenectady, 38 F. Supp. 3d 238 (N.D. N.Y. 2014).

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32 Am. Jur. 2d False Imprisonment § 5

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False Imprisonment

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I. Civil Actions

A. Definitions and Distinctions

2. Related Torts

§ 5. Relation of defamation to false imprisonment or arrest in civil actions

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  2

An action for false imprisonment does not require proof of injury to the individual's person, character, or reputation.¹ Thus, providing incorrect information to a court, resulting in an arrest based on a defective subpoena and subsequent bench warrant, constitutes false imprisonment resulting in the plaintiff's unlawful restraint, rather than a defamation that invades the plaintiff's interest in reputation and good name.² Conversely, a mere accusation of commission of a crime, however slanderous, does not of itself support a claim for false arrest.³

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Footnotes

¹ [Charles v. Norfolk & W. Ry. Co.](#), 188 F.2d 691 (7th Cir. 1951); [S. H. Kress & Co. v. Bradshaw](#), 1940 OK 70, 186 Okla. 588, 99 P.2d 508 (1940).

² [Simon v. U.S.](#), 711 F.2d 740 (5th Cir. 1983).

³ [Vessels v. District of Columbia](#), 531 A.2d 1016 (D.C. 1987).

32 Am. Jur. 2d False Imprisonment § 6

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False Imprisonment
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I. Civil Actions

A. Definitions and Distinctions

2. Related Torts

§ 6. Relation of negligence to false imprisonment or arrest in civil actions

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 2, 4

According to some courts, a person may be liable for damages for false arrest or false imprisonment if said action is negligent.¹ According to other courts, however, false imprisonment is an intentional tort, not a tort of negligence.² Since false imprisonment requires an intent to confine,³ there is no cause of action for negligent false arrest or imprisonment, but claims involving confinement may be based on negligence,⁴ so long as the action is governed by the principles applicable to negligence,⁵ including the duty of care, negligent discharge of that duty, actual injury to some interest other than the bare interest in freedom from arrest and confinement, proximate cause, and compensable damage.⁶ Conversely, a plaintiff is not required to show the existence and breach of a duty⁷ and actual damages⁸ to establish false arrest or imprisonment.

A claim for negligent failure to rescue may not be characterized as false imprisonment.⁹

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Footnotes

¹ [Diaz-Nieves v. United States](#), 858 F.3d 678 (1st Cir. 2017) (under Puerto Rico law); [Merman v. City of Camden](#), 824 F. Supp. 2d 581 (D.N.J. 2010) (applying New Jersey law).

² [Miller v. Grand Union Co.](#), 250 Ga. App. 751, 552 S.E.2d 491 (2001).

³ § 11.

⁴ [Bocanegra v. Jakubowski](#), 241 Cal. App. 4th 848, 194 Cal. Rptr. 3d 327 (4th Dist. 2015), review denied, (Feb. 17, 2016) (although false imprisonment is an intentional tort because it entails an intentional act resulting in confinement, it can arise through negligence).

5 Corporate Property Investors v. Milon, 249 Ga. App. 699, 549 S.E.2d 157 (2001).

6 Vahlsing v. Commercial Union Ins. Co., Inc., 928 F.2d 486 (1st Cir. 1991); Corporate Property Investors v. Milon, 249 Ga. App. 699, 549 S.E.2d 157 (2001).

7 Gulley v. Werth, 61 S.W.3d 293 (Mo. Ct. App. S.D. 2001).

8 Blue v. Harrah's North Kansas City, LLC, 170 S.W.3d 466 (Mo. Ct. App. W.D. 2005).

9 Johnson v. Barker, 799 F.2d 1396 (9th Cir. 1986).

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I. Civil Actions

B. Elements

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False Imprisonment
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I. Civil Actions

B. Elements

1. In General

§ 7. Elements of false imprisonment or arrest in civil actions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  2

The essential elements of false imprisonment are: (1) the detention or restraint of one against his or her will, and (2) the unlawfulness of the detention or restraint.¹

If the confinement leads to a subsequent prosecution, termination of the prosecution is generally not essential to maintain the action,² although a conviction may be conclusive evidence that there was probable cause for the arrest, and hence it was legal,³ and under some state laws, a prisoner is not entitled to damages from government units for false imprisonment if the conviction has not been overturned.⁴ Also, it is not necessary that the wrongful act that results in the detention be under color of any legal or judicial proceeding.⁵ In fact, the exact opposite may be true, and the plaintiff may have to establish that the detention was without legal authority or color of authority.⁶

Although assault is often an ingredient of false imprisonment,⁷ it is not essential.⁸ However, some courts have held or stated that the action of false imprisonment always includes the element of assault in a technical sense.⁹

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Footnotes

¹ Harris v. U.S. Department of Veterans Affairs, 776 F.3d 907 (D.C. Cir. 2015) (applying District of Columbia law); Doe v. Safeway, Inc., 88 A.3d 131 (D.C. 2014); Brown v. Christian Bros. University, 428 S.W.3d 38, 304 Ed. Law Rep. 628 (Tenn. Ct. App. 2013).

² Collins v. Owens, 77 Cal. App. 2d 713, 176 P.2d 372 (1st Dist. 1947); Hunt v. Davis, 248 N.C. 69, 102 S.E.2d 405 (1958).

As to the effect of an acquittal, see § 23.

3 § 24.

4 *Scruggs v. Allen County/City of Fort Wayne*, 829 N.E.2d 1049 (Ind. Ct. App. 2005).

5 *Griffin v. Clark*, 55 Idaho 364, 42 P.2d 297 (1935); *S. H. Kress & Co. v. Bradshaw*, 1940 OK 70, 186 Okla. 588, 99 P.2d 508 (1940).

6 *Harder v. Edwards*, 174 So. 3d 524 (Fla. 4th DCA 2015).

7 *Ware v. Dunn*, 80 Cal. App. 2d 936, 183 P.2d 128 (2d Dist. 1947); *Hoffman v. Clinic Hospital*, 213 N.C. 669, 197 S.E. 161 (1938).

8 *Alteraude v. Los Angeles Turf Club*, 97 Cal. App. 2d 735, 218 P.2d 802 (2d Dist. 1950); *Hoffman v. Clinic Hospital*, 213 N.C. 669, 197 S.E. 161 (1938).

9 *Perry v. S. H. Kress & Co.*, 187 Kan. 537, 358 P.2d 665 (1961).

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

B. Elements

1. In General

§ 8. Malice or motive as elements of false imprisonment or arrest in civil actions

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  4

Actual malice or bad motive is not an essential element of an action for false imprisonment.¹ Except to increase or mitigate the damages, the existence of malice in fact is ordinarily immaterial.² However, in some jurisdictions,³ and under some statutes,⁴ malice is an element. Malice may be inferred from a lack of probable cause,⁵ or a finding that the defendant acted in reckless disregard of the plaintiff's rights.⁶

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Footnotes

¹ [Boans v. Town of Cheektowaga](#), 5 F. Supp. 3d 364 (W.D. N.Y. 2014) (applying New York law); [Marshall v. District of Columbia](#), 391 A.2d 1374 (D.C. 1978).

² [Harbison v. Chicago, R. I. & P. Ry. Co.](#), 327 Mo. 440, 37 S.W.2d 609, 79 A.L.R. 1 (1931); [Kredit v. Ryan](#), 68 S.D. 274, 1 N.W.2d 813 (1942).

As to evidence as to malice or good faith being relevant to damages, generally, see § 123, and with respect to punitive damages, see § 149.

³ [Lavassani v. City of Canton, Ga.](#), 760 F. Supp. 2d 1346 (N.D. Ga. 2010) (applying Georgia law); [Lockett v. New Orleans City](#), 639 F. Supp. 2d 710 (E.D. La. 2009), aff'd, 2010 WL 1811772 (5th Cir. 2010), redesignated as opinion, 607 F.3d 992 (5th Cir. 2010) (applying Louisiana law); [Thompson v. Howard Bros., Inc.](#), 289 Ga. App. 273, 657 S.E.2d 4 (2008).

⁴ [Lavassani v. City of Canton, Ga.](#), 760 F. Supp. 2d 1346 (N.D. Ga. 2010) (applying Georgia law); [Corporate Property Investors v. Milon](#), 249 Ga. App. 699, 549 S.E.2d 157 (2001).

⁵ [Lockett v. New Orleans City](#), 639 F. Supp. 2d 710 (E.D. La. 2009), aff'd, 2010 WL 1811772 (5th Cir. 2010),

redesignated as opinion, [607 F.3d 992](#) (5th Cir. 2010) (applying Louisiana law); *Jenkins v. Baldwin*, 801 So. 2d 485 (La. Ct. App. 4th Cir. 2001).

As to the effect of lack of probable cause, see § 9.

⁶ *Simmons v. Mableton Finance Co.*, 254 Ga. App. 363, 562 S.E.2d 794 (2002); *Jenkins v. Baldwin*, 801 So. 2d 485 (La. Ct. App. 4th Cir. 2001).

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

B. Elements

1. In General

§ 9. Absence of probable cause as element of false imprisonment or arrest in civil actions

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  

It is frequently held or recognized that the lack of probable cause is not an essential element of the action for false imprisonment.¹ In fact, in such jurisdictions, an arrest may be considered privileged as matter of law if it is supported by probable cause.² The existence of probable cause constitutes justification and is a complete defense to an action for false arrest.³ On the other hand, some courts have expressly required the plaintiff in a false arrest action to show a lack of probable cause for the detention,⁴ or indicated that the plaintiff has the burden of proving the lack of probable cause by affirmative evidence.⁵ It has also been held that allegations of lack of probable cause are requisite parts of the plaintiff's *prima facie* case.⁶ A showing of probable cause defeats a claim based on the police detaining a person without a warrant,⁷ since this goes to the issue of the legality of the detention.⁸

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Footnotes

¹ [Ferrell v. Mikula](#), 295 Ga. App. 326, 672 S.E.2d 7 (2008); [Ruggerio v. New York Racing Ass'n, Inc.](#), 14 A.D.3d 976, 788 N.Y.S.2d 515 (3d Dep't 2005) (but may be relevant to an affirmative defense).

As to the relevance of probable cause where the issue is justification for an arrest or detention without a warrant, see §§ 69, 74.

² [Slack v. County of Suffolk](#), 50 F. Supp. 3d 254 (E.D. N.Y. 2014).

³ [Valade v. City of New York](#), 949 F. Supp. 2d 519 (S.D. N.Y. 2013) (applying New York law).

⁴ [Jones-Huff v. Hill](#), 208 F. Supp. 3d 912 (N.D. Ill. 2016) (applying Illinois law); [Hobson v. Dolgencorp, LLC](#), 142 F. Supp. 3d 487 (S.D. Miss. 2015) (applying Mississippi law); [Zimbelman v. Savage](#), 745 F. Supp. 2d 664 (D.S.C. 2010) (applying South Carolina law); [McKissick v. S.O.A., Inc.](#), 299 Ga. App. 772, 684 S.E.2d 24 (2009); [Mayweather v.](#)

Isle of Capri Casino, Inc., 996 So. 2d 136 (Miss. Ct. App. 2008).

⁵ Taylor v. Dillards Dept. Stores, Inc., 971 F.2d 601 (10th Cir. 1992) (holding that an instruction that the defendant had the burden of proof on that point constitutes reversible error).

⁶ Meerbrey v. Marshall Field and Co., Inc., 139 Ill. 2d 455, 151 Ill. Dec. 560, 564 N.E.2d 1222 (1990) (lack of reasonable ground to believe that plaintiff committed an offense); Garton v. City of Reno, 102 Nev. 313, 720 P.2d 1227 (1986).

⁷ Villegas v. Griffin Industries, 975 S.W.2d 745 (Tex. App. Corpus Christi 1998).

⁸ §§ 24, 25.

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32 Am. Jur. 2d False Imprisonment § 10

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False Imprisonment
John Bourdeau, J.D.

- I. Civil Actions
- B. Elements
- 2. Detention or Restraint

§ 10. Detention or restraint as element of false imprisonment or arrest in civil actions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  5

To constitute a false imprisonment, it is essential that there be some restraint of the person.¹ This entails the deprivation of liberty of movement or freedom to remain in a place of one's lawful choice² or freedom of locomotion.³ However, it is not necessary that there be confinement in a jail or prison.⁴ All that is necessary is that the individual be restrained against his or her will⁵ and without authority,⁶ either directly or indirectly, in any manner or by any means.⁷ The wrong may be committed by acts, words,⁸ gestures, or the like.⁹ The position has also been taken, however, that to constitute false imprisonment the restraint or detention imposed must be within limits set by the restraining party¹⁰ and that it must be total.¹¹

There is some authority that merely questioning a person does not constitute detention for purposes of false imprisonment.¹² This may be true even where the questioning is aggressive.¹³ Thus, asking a person to return to a store does not constitute an "arrest" on which an action for false imprisonment can be based,¹⁴ particularly where the person was not accused of any crime and nothing was done to indicate that the person was being taken into custody or being held for a peace officer and to answer a criminal charge.¹⁵

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Footnotes

¹ [Shaw v. City of Selma](#), 2017 WL 1025677 (S.D. Ala. 2017) (applying Alabama law); [Lipenga v. Kambalame](#), 219 F. Supp. 3d 517 (D. Md. 2016) (applying Maryland law); [Wilkerson v. Duke University](#), 229 N.C. App. 670, 748 S.E.2d 154, 297 Ed. Law Rep. 550 (2013).

² [Hughes v. Pullman](#), 2001 MT 216, 306 Mont. 420, 36 P.3d 339 (2001).

³ [Lane v. District of Columbia](#), 72 F. Supp. 3d 215 (D.D.C. 2014).

4 § 13.

5 Shannon v. Office Max North America, Inc., 291 Ga. App. 834, 662 S.E.2d 885 (2008); Cook v. American Gateway
Bank, 49 So. 3d 23 (La. Ct. App. 1st Cir. 2010); Fire Ins. Exchange v. Weitzel, 2016 MT 113, 383 Mont. 364, 371
P.3d 457 (2016).

6 Ray v. American Airlines, Inc., 609 F.3d 917, 76 Fed. R. Serv. 3d 1432, 77 Fed. R. Serv. 3d 211 (8th Cir. 2010)
(applying Texas law); Yi v. Yang, 282 P.3d 340 (Alaska 2012); Cook v. American Gateway Bank, 49 So. 3d 23 (La.
Ct. App. 1st Cir. 2010).

7 Griffin v. Clark, 55 Idaho 364, 42 P.2d 297 (1935); Mahan v. Adam, 144 Md. 355, 124 A. 901 (1924).

8 Hogue v. City of Fort Wayne, 599 F. Supp. 2d 1009 (N.D. Ind. 2009) (applying Indiana law); Callum v. CVS Health
Corporation, 137 F. Supp. 3d 817 (D.S.C. 2015) (applying South Carolina law); Fire Ins. Exchange v. Weitzel, 2016
MT 113, 383 Mont. 364, 371 P.3d 457 (2016).

As to restraint or detention by force or threats, see §§ 16, 17.

9 Smith v. Wal-Mart Stores East, LP, 330 Ga. App. 340, 765 S.E.2d 518 (2014), cert. denied, (Apr. 20, 2015);
McDonald's Corp. v. Ogborn, 309 S.W.3d 274 (Ky. Ct. App. 2009) (rejected on other grounds by, Bargo v. Goodwill
Industries of Kentucky, Inc., 969 F. Supp. 2d 819 (E.D. Ky. 2013)).

10 Stallings v. Foster, 119 Cal. App. 2d 614, 259 P.2d 1006 (3d Dist. 1953).

11 § 14.

12 Pittman v. Boyd Biloxi, L.L.C., 566 Fed. Appx. 344 (5th Cir. 2014) (applying Mississippi law); Saucedo-Carrillo v.
U.S., 983 F. Supp. 2d 917 (N.D. Ohio 2013), aff'd, 635 Fed. Appx. 197 (6th Cir. 2015) (applying Ohio law).

13 Saucedo-Carrillo v. U.S., 983 F. Supp. 2d 917 (N.D. Ohio 2013), aff'd, 635 Fed. Appx. 197 (6th Cir. 2015) (officer
never told aliens that they were not allowed to leave, aliens were initially free to continue pumping gas, aliens had
sufficient room to back up their truck and leave, officer's questions were not accompanied by threat of force, and
officer did not condition aliens' departure on production of identification).

14 Carruth v. Barker, 454 So. 2d 539 (Ala. 1984) (an investigatory stop is not an arrest); Miller v. Kroger Co., 82 Ark.
App. 281, 105 S.W.3d 789 (2003) (customer asked to return to the store and complete paperwork regarding items
taken without paying).

15 Lester v. Albers Super Markets, Inc., 94 Ohio App. 313, 51 Ohio Op. 457, 65 Ohio L. Abs. 315, 114 N.E.2d 529 (1st
Dist. Hamilton County 1952).

32 Am. Jur. 2d False Imprisonment § 11

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

B. Elements

2. Detention or Restraint

§ 11. Intent as element of detention or restraint for purposes of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  4

False imprisonment is an intentional tort, requiring a willful detention.¹ A person is liable for false imprisonment only if his or her conduct was for the purpose of imposing confinement, or with knowledge that confinement will, to a substantial certainty, result from it.²

The necessary intent is merely the intent to confine,³ or to create a similar intrusion.⁴ Any intentional conduct that results in placing a person in a position where he or she cannot exercise his or her will in going where he or she may lawfully go may constitute false imprisonment.⁵

While the illegal or unlawful nature of the restraint necessarily implies the deliberateness of the defendant's actions,⁶ the defendant need only intend to accomplish the act that causes the confinement, and need not intend that the confinement be unlawful; the defendant's actual motive is immaterial, because the intent relates to the "confinement" element, rather than to the "unlawful" element of the detention.⁷ Thus, the defendant must have known that the plaintiff was imprisoned, but need not have known that the imprisonment was wrongful.⁸ Likewise, the plaintiff is not required to prove malice, wanton or willful disregard,⁹ ill will, or the slightest wrongful intention.¹⁰ In fact, the intentional act resulting in confinement, can even arise through negligence.¹¹ The good faith of the defendant will not defeat a plaintiff's right to recover.¹² According to other courts, however, a defendant acting with intent must be more than merely negligent or reckless.¹³ Mere knowledge and appreciation of the risk is not the same as intent to cause injury; rather, a result is intended if the act is done with the purpose of accomplishing such result or with knowledge that to a substantial certainty such result will ensue.¹⁴

If an act is done with the intention of causing confinement and is a substantial factor in bringing it about,¹⁵ it is immaterial whether the act directly or indirectly causes the confinement.¹⁶ In this connection, there is some authority to the effect that the doctrine of transferred intent is applicable, and the intent to confine any person is sufficient to render one liable to the person actually confined, and it is immaterial that a defendant did not know the identity of the person he or she intended to confine,

§ 11. Intent as element of detention or restraint for..., 32 Am. Jur. 2d False...

or intended to confine someone else.¹⁷ However, a false imprisonment claim against an airline arising out of a “skyjacking” by terrorists does not state a cause of action, since it is the terrorists who had the intent to confine, rather than the airline.¹⁸

Deliberate indifference to a person’s right to freedom from prolonged incarceration supplies the necessary intent.¹⁹

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Footnotes

¹ [Wal-Mart Stores, Inc. v. Rodriguez](#), 92 S.W.3d 502 (Tex. 2002).

² [Garcia v. City of Merced](#), 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law); [Martinsky v. City of Bridgeport](#), 814 F. Supp. 2d 130 (D. Conn. 2011), judgment aff’d, 504 Fed. Appx. 43 (2d Cir. 2012) (applying Connecticut law).

³ [Vahlsing v. Commercial Union Ins. Co., Inc.](#), 928 F.2d 486 (1st Cir. 1991).

⁴ [Robles v. Agreserves, Inc.](#), 158 F. Supp. 3d 952 (E.D. Cal. 2016) (applying California law).

⁵ [Holmes v. Crossroads Joint Venture](#), 262 Neb. 98, 629 N.W.2d 511 (2001).

⁶ [Emory v. Pendergraph](#), 154 N.C. App. 181, 571 S.E.2d 845 (2002).

⁷ [Oviatt By and Through Waugh v. Pearce](#), 954 F.2d 1470 (9th Cir. 1992).

⁸ [Kinegak v. State, Dept. of Corrections](#), 129 P.3d 887 (Alaska 2006).

⁹ [C.P. by and through Perez v. Collier County](#), 145 F. Supp. 3d 1085 (M.D. Fla. 2015) (applying Florida law).

¹⁰ [Harbeck v. Smith](#), 814 F. Supp. 2d 608 (E.D. Va. 2011) (applying Virginia law).

¹¹ [Bocanegra v. Jakubowski](#), 241 Cal. App. 4th 848, 194 Cal. Rptr. 3d 327 (4th Dist. 2015), review denied, (Feb. 17, 2016).

¹² [Merman v. City of Camden](#), 824 F. Supp. 2d 581 (D.N.J. 2010) (applying New Jersey law); [Parker v. Austin](#), 105 F. Supp. 3d 592 (W.D. Va. 2015) (applying Virginia law).

¹³ [Vumbaca v. Terminal One Group Ass’n L.P.](#), 859 F. Supp. 2d 343 (E.D. N.Y. 2012) (applying New York law).

¹⁴ [Vumbaca v. Terminal One Group Ass’n L.P.](#), 859 F. Supp. 2d 343 (E.D. N.Y. 2012) (applying New York law).

¹⁵ [Griffin v. Clark](#), 55 Idaho 364, 42 P.2d 297 (1935).

¹⁶ [Goodman v. Las Vegas Metropolitan Police Dept.](#), 963 F. Supp. 2d 1036, 92 Fed. R. Evid. Serv. 41 (D. Nev. 2013), aff’d in part, rev’d in part, dismissed in part on other grounds, 613 Fed. Appx. 610 (9th Cir. 2015) (applying Nevada law); [Griffin v. Clark](#), 55 Idaho 364, 42 P.2d 297 (1935).

¹⁷ [Du Lac v. Perma Trans Products, Inc.](#), 103 Cal. App. 3d 937, 163 Cal. Rptr. 335 (2d Dist. 1980) (disapproved of on other grounds by, [Hagberg v. California Federal Bank FSB](#), 32 Cal. 4th 350, 7 Cal. Rptr. 3d 803, 81 P.3d 244 (2004)).

¹⁸ [Schroeder v. Lufthansa German Airlines](#), 875 F.2d 613, 53 Ed. Law Rep. 1095 (7th Cir. 1989); [Abourezk v. New York Airlines, Inc.](#), 895 F.2d 1456 (D.C. Cir. 1990).

¹⁹ [Oviatt By and Through Waugh v. Pearce](#), 954 F.2d 1470 (9th Cir. 1992).

32 Am. Jur. 2d False Imprisonment § 12

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False Imprisonment

John Bourdeau, J.D.

I. Civil Actions

B. Elements

2. Detention or Restraint

§ 12. Awareness of confinement as element of false imprisonment or arrest in civil actions

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  2

A plaintiff in a false imprisonment action must be aware or conscious of the confinement.¹ There is no liability for intentionally confining another unless that person knows of the confinement.² This rule gives recognition to the fact that false imprisonment, as a dignitary tort, is not suffered unless its victim knows of the dignitary invasion.³ A person may be shown to have been conscious of confinement, even though in a state of intoxication at the time.⁴

A plaintiff in a false imprisonment action must reasonably believe that he or she has been detained.⁵ The determination whether particular conduct constitutes false imprisonment does not depend upon the plaintiff's subjective state of mind, but on the defendant's actions and words, which must provide a basis for a reasonable apprehension of present confinement.⁶

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Footnotes

¹ [Carr v. City of Hillsboro](#), 497 F. Supp. 2d 1197, 223 Ed. Law Rep. 670 (D. Or. 2007) (applying Oregon law); [Ferris v. Millman](#), 17 Misc. 3d 898, 847 N.Y.S.2d 373 (Sup 2007); [Miller v. Columbia County](#), 282 Or. App. 348, 385 P.3d 1214 (2016), review denied, 361 Or. 238, 391 P.3d 797 (2017).

² [Harrer v. Montgomery Ward & Co.](#), 124 Mont. 295, 221 P.2d 428 (1950).

³ [Parvi v. City of Kingston](#), 41 N.Y.2d 553, 394 N.Y.S.2d 161, 362 N.E.2d 960 (1977).

⁴ [Parvi v. City of Kingston](#), 41 N.Y.2d 553, 394 N.Y.S.2d 161, 362 N.E.2d 960 (1977) (making a distinction between later recollection and the existence of consciousness of the confinement at the time when imprisonment took place).

⁵ [Leiseth v. Fred Meyer, Inc.](#), 185 Or. App. 53, 57 P.3d 914 (2002).

⁶

[Belcher v. Wal-Mart Stores, Inc., 211 W. Va. 712, 568 S.E.2d 19 \(2002\).](#)

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32 Am. Jur. 2d False Imprisonment § 13

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- I. Civil Actions
- B. Elements
- 2. Detention or Restraint

§ 13. Place of confinement as element of false imprisonment or arrest in civil actions

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West's Key Number Digest
West's Key Number Digest, [False Imprisonment](#)  6

A.L.R. Library
[False imprisonment in connection with confinement in nursing home or hospital, 4 A.L.R.4th 449](#)

Trial Strategy
[Wrongful Confinement to a Mental Health or Developmental Disabilities Facility, 44 Am. Jur. Proof of Facts 3d 217](#)

Forms
Forms relating to false imprisonment by private individuals, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

The term “false imprisonment” is misleading, in that it does not necessarily refer to confinement within a jail or prison.¹ Any

confinement of a person is an imprisonment, whether it is in prison² or in any place temporarily used for the purpose of confinement.³ Thus, an action for false imprisonment may be predicated on detention or confinement in a mental institution,⁴ hospital,⁵ nursing home,⁶ or juvenile home.⁷ Also, an unlawful restraint and detention may occur in such places as a restaurant,⁸ nightclub,⁹ store,¹⁰ hotel room,¹¹ locker room,¹² private house,¹³ motor vehicle,¹⁴ airplane on a runway,¹⁵ casino,¹⁶ chemical dependency treatment center under a “voluntary treatment agreement,”¹⁷ or place of employment or former employment.¹⁸

Some courts have required that the confinement occur within boundaries fixed by the defendant¹⁹ or within a limited area.²⁰

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Footnotes

¹ *Hamilton v. City of Jackson*, 508 F. Supp. 2d 1045 (S.D. Ala. 2007), aff'd, 261 Fed. Appx. 182 (11th Cir. 2008) (applying Alabama law); *Ware v. Dunn*, 80 Cal. App. 2d 936, 183 P.2d 128 (2d Dist. 1947); *Cline v. Flagler Sales Corp.*, 207 So. 2d 709 (Fla. 3d DCA 1968) (actual incarceration not necessary).

² *Gogue v. MacDonald*, 35 Cal. 2d 482, 218 P.2d 542, 21 A.L.R.2d 639 (1950); *Fox v. McCurnin*, 205 Iowa 752, 218 N.W. 499 (1928).

³ *Vandiveer v. Charters*, 110 Cal. App. 347, 294 P. 440 (3d Dist. 1930).

⁴ *Wagenmann v. Adams*, 829 F.2d 196 (1st Cir. 1987); *Day v. Providence Hosp.*, 622 So. 2d 1273 (Ala. 1993); *Radcliff v. County of Harrison*, 627 N.E.2d 1305 (Ind. 1994).

As to the effect of a lawful commitment of a mentally ill person, see § 33.

⁵ *Mooney v. County of Monroe*, 508 F. Supp. 2d 222 (W.D. N.Y. 2007) (applying New York law); *Lolley v. Charter Woods Hosp., Inc.*, 572 So. 2d 1223 (Ala. 1990) (addiction unit, but patient failed to rebut the hospital's showing of lawfulness).

⁶ *Pounders v. Trinity Court Nursing Home, Inc.*, 265 Ark. 1, 576 S.W.2d 934, 4 A.L.R.4th 442 (1979) (but no false imprisonment where the home initially refused to release the plaintiff into the custody of anyone other than the person who had arranged for her admission); *Big Town Nursing Home, Inc. v. Newman*, 461 S.W.2d 195 (Tex. Civ. App. Waco 1970).

⁷ *McAlmond v. Trippel*, 93 Cal. App. 584, 269 P. 937 (3d Dist. 1928).

⁸ *Jacques v. Childs Dining Hall Co.*, 244 Mass. 438, 138 N.E. 843, 26 A.L.R. 1329 (1923).

⁹ *Mason v. Wrightson*, 205 Md. 481, 109 A.2d 128 (1954).

¹⁰ *Berry v. Target Corporation*, 214 F. Supp. 3d 530 (E.D. Va. 2016) (applying Virginia law).

¹¹ *Cicurel v. Mollet*, 1 A.D.2d 239, 149 N.Y.S.2d 397 (1st Dep't 1956), judgment aff'd, 1 N.Y.2d 797, 153 N.Y.S.2d 60, 135 N.E.2d 594 (1956).

¹² *Doe v. City of San Diego*, 198 F. Supp. 3d 1153 (S.D. Cal. 2016) (applying California law).

¹³ *Holmes v. Nester*, 81 Ariz. 372, 306 P.2d 290, 62 A.L.R.2d 1322 (1957); *Adelman v. State*, 828 S.W.2d 418 (Tex. Crim. App. 1992) (barred room).

¹⁴ *Halbert v. City of Sherman*, Tex., 33 F.3d 526 (5th Cir. 1994); *Cline v. Flagler Sales Corp.*, 207 So. 2d 709 (Fla. 3d DCA 1968).

¹⁵ *Abourezk v. New York Airlines, Inc.*, 895 F.2d 1456 (D.C. Cir. 1990).

¹⁶ *Alpha Gulf Coast, Inc. v. Jackson*, 801 So. 2d 709 (Miss. 2001); *Hazelwood v. Harrah's*, 109 Nev. 1005, 862 P.2d 1189 (1993) (overruled on other grounds by, *Vinci v. Las Vegas Sands, Inc.*, 115 Nev. 243, 984 P.2d 750 (1999)).

17 Collins v. Straight, Inc., 748 F.2d 916, 17 Fed. R. Evid. Serv. 1351 (4th Cir. 1984).

18 Berry v. Loiseau, 223 Conn. 786, 614 A.2d 414 (1992); Meerbrey v. Marshall Field and Co., Inc., 139 Ill. 2d 455, 151
Ill. Dec. 560, 564 N.E.2d 1222 (1990).

19 Vahlsing v. Commercial Union Ins. Co., Inc., 928 F.2d 486 (1st Cir. 1991).

20 LeFever v. Ferguson, 956 F. Supp. 2d 819 (S.D. Ohio 2013), aff'd, 645 Fed. Appx. 438 (6th Cir. 2016), cert. denied,
137 S. Ct. 496, 196 L. Ed. 2d 404 (2016) (applying Ohio law); Sharp v. Cleveland Clinic, 176 Ohio App. 3d 226,
2008-Ohio-1777, 891 N.E.2d 809 (11th Dist. Trumbull County 2008).

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False Imprisonment
John Bourdeau, J.D.

- I. Civil Actions
- B. Elements
- 2. Detention or Restraint

§ 14. Total, partial, or conditional restraint as elements of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  6

Some courts have required that a restraint on which a false imprisonment action is based be total.¹ There is no false imprisonment if a reasonable way of escape is available,² unless the person restrained is unaware of the way of escape.³ However, there is also authority that false imprisonment may result from a partial restraint,⁴ such as where a person's baggage was removed from a train and the passenger had to remain behind to regain possession.⁵ The true test, it has been said, seems not to be the extent of the restraint, but its lawfulness.⁶

A defendant may not impose unconscionable conditions upon a person's detention.⁷ For instance, a defendant does not have the right to condition the release of a detainee upon the execution of an incriminating statement.⁸

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Footnotes

- ¹ [Smith v. Knight](#), 907 So. 2d 831 (La. Ct. App. 2d Cir. 2005); [Harwood v. Johnson](#), 326 N.C. 231, 388 S.E.2d 439 (1990).
- ² [Davis & Allcott Co. v. Boozer](#), 215 Ala. 116, 110 So. 28, 49 A.L.R. 1307 (1926).
- ³ [Talcott v. National Exhibition Co.](#), 144 A.D. 337, 128 N.Y.S. 1059 (2d Dep't 1911).
- ⁴ [Cullen v. Dickenson](#), 33 S.D. 27, 144 N.W. 656 (1913).
- ⁵ [Griffin v. Clark](#), 55 Idaho 364, 42 P.2d 297 (1935).

⁶ People v. Grant, 8 Cal. App. 4th 1105, 10 Cal. Rptr. 2d 828 (5th Dist. 1992); Griffin v. Clark, 55 Idaho 364, 42 P.2d 297 (1935); Weiler v. Herzfeld-Phillipson Co., 189 Wis. 554, 208 N.W. 599 (1926).

⁷ Orellana v. Macy's Retail Holdings, Inc., 53 Misc. 3d 622, 36 N.Y.S.3d 547 (Sup 2016).

⁸ Orellana v. Macy's Retail Holdings, Inc., 53 Misc. 3d 622, 36 N.Y.S.3d 547 (Sup 2016).

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32 Am. Jur. 2d False Imprisonment § 15

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I. Civil Actions

B. Elements

2. Detention or Restraint

§ 15. Period of confinement as element of false imprisonment or arrest in civil actions

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  6

Any period of unlawful confinement, however brief, may result in liability for false imprisonment.¹ Confinement for an appreciable length of time,² however short, even as short as 15 minutes, may be sufficient to create liability for false imprisonment.³ Even if no “appreciable” length of time elapses, the necessary element of false imprisonment is proven, if enough time elapses for the plaintiff to recognize the illegal restraint.⁴ It is generally of no concern, except in determining damages, that the confinement is of a temporary nature.⁵ However, it has elsewhere been said that brief confinements or restraints are insufficient.⁶

False imprisonment does not occur if the duration of the detention was reasonable.⁷ An otherwise lawful detention, such as one authorized under a merchant’s detention statute,⁸ may become unlawful if prolonged for an unreasonable time.⁹ Similarly, an otherwise reasonable period of detention may become tortious, if the time of detention exceeds the statutory time limit, as in the case of delay in arraignment,¹⁰ or excessive detention beyond the lawful term of an incarceration.¹¹

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¹ Selective Ins. Co. of South Carolina v. City of Paris, 681 F. Supp. 2d 975 (C.D. Ill. 2010) (applying Illinois law); Illaraza v. HOVENSA LLC, 73 F. Supp. 3d 588 (D.V.I. 2014) (applying Virgin Islands law); Wilkerson v. Duke University, 229 N.C. App. 670, 748 S.E.2d 154, 297 Ed. Law Rep. 550 (2013).

² Sanders v. City of Fresno, 551 F. Supp. 2d 1149 (E.D. Cal. 2008), aff’d, 340 Fed. Appx. 377 (9th Cir. 2009) (applying California law); LeFever v. Ferguson, 956 F. Supp. 2d 819 (S.D. Ohio 2013), aff’d, 645 Fed. Appx. 438 (6th Cir. 2016), cert. denied, 137 S. Ct. 496, 196 L. Ed. 2d 404 (2016) (applying Ohio law); Sharp v. Cleveland Clinic, 176 Ohio App. 3d 226, 2008-Ohio-1777, 891 N.E.2d 809 (11th Dist. Trumbull County 2008).

3 Fermino v. Fedco, Inc., 7 Cal. 4th 701, 30 Cal. Rptr. 2d 18, 872 P.2d 559 (1994).

4 Wilkerson v. Duke University, 229 N.C. App. 670, 748 S.E.2d 154, 297 Ed. Law Rep. 550 (2013).

5 Banks v. Fritsch, 39 S.W.3d 474, 152 Ed. Law Rep. 379 (Ky. Ct. App. 2001) (nominal damages recoverable); West v. King's Dept. Store, Inc., 321 N.C. 698, 365 S.E.2d 621 (1988).

6 Moore v. City of Detroit, 252 Mich. App. 384, 652 N.W.2d 688 (2002).

7 Caban v. U.S., 728 F.2d 68 (2d Cir. 1984) (six-day erroneous immigration detention); Smith v. Knight, 907 So. 2d 831 (La. Ct. App. 2d Cir. 2005) (10-minute detention of employee after store manager learned that money was missing).

8 § 66.

9 Latek v. K Mart Corp., 224 Neb. 807, 401 N.W.2d 503 (1987).

10 Oviatt By and Through Waugh v. Pearce, 954 F.2d 1470 (9th Cir. 1992).

11 Bennett v. Ohio Dept. of Rehab. & Corr., 60 Ohio St. 3d 107, 573 N.E.2d 633 (1991).

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- I. Civil Actions
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- 2. Detention or Restraint

§ 16. Force or threats as elements of detention or restraint for purposes of false imprisonment or arrest in civil actions

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  5

Forms

Forms relating to force, threats, or violence, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\)](#) [Search Query](#)]

Any exercise of force, or express or implied threat of force, by which another person is deprived of his or her liberty or compelled to go where he or she does not wish to go is imprisonment.¹ Restraint may be accomplished by means of physical force, threat of force or arrest, confinement by physical barrier, or by any other form of unreasonable duress.² The individual may be effectively restrained by acts or words that one fears disregarding.³ Thus, although the confinement or restraint necessary to create liability for false imprisonment may be imposed by compulsive physical force,⁴ it may be accomplished by either force or fear,⁵ and the actual use of force is not required.⁶ Also, there need not be any actual contact with the person⁷ such as manual seizure or touching.⁸ The essential restraint may be caused by threats, as well as by actual force; the threats may be by conduct or words⁹ if the conduct or words are such as to induce a reasonable apprehension of the use of force.¹⁰ On the other hand, submission to an employer's mere verbal directions, unaccompanied by force or threats, does not constitute false imprisonment.¹¹

A person who relinquishes his or her right to move about freely as the only alternative to relinquishment of another right, such as that of an unsullied reputation, may be restrained for the purposes of a false imprisonment claim.¹² However, a fear of being arrested or fired is not sufficient to establish force.¹³

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Footnotes

- ¹ Perkins v. City of Creola, 713 F. Supp. 2d 1326 (S.D. Ala. 2010) (applying Alabama law); Lipenga v. Kambalame, 219 F. Supp. 3d 517 (D. Md. 2016) (applying Maryland law).
- ² Robles v. Agreserves, Inc., 158 F. Supp. 3d 952 (E.D. Cal. 2016) (applying California law); Jon Davler, Inc. v. Arch Insurance Company, 229 Cal. App. 4th 1025, 178 Cal. Rptr. 3d 502 (2d Dist. 2014), as modified, (Sept. 15, 2014).
- ³ Fire Ins. Exchange v. Weitzel, 2016 MT 113, 383 Mont. 364, 371 P.3d 457 (2016).
- ⁴ Hughes v. Oreb, 36 Cal. 2d 854, 228 P.2d 550 (1951).
- ⁵ Shannon v. Office Max North America, Inc., 291 Ga. App. 834, 662 S.E.2d 885 (2008).
- ⁶ Wilson ex rel. Adams v. Cahokia School Dist. No. 187, 470 F. Supp. 2d 897, 217 Ed. Law Rep. 218 (S.D. Ill. 2007) (applying Illinois law); Benjamin v. Sparks, 173 F. Supp. 3d 272, 335 Ed. Law Rep. 813 (E.D. N.C. 2016) (applying North Carolina law).
- ⁷ People v. Agnew, 16 Cal. 2d 655, 107 P.2d 601 (1940); Arlan v. Cervini, 478 A.2d 976 (R.I. 1984).
- ⁸ Miller v. CVS Pharmacy, Inc., 779 F. Supp. 2d 683 (E.D. Mich. 2011) (applying Michigan law); Stone v. Finnerty, 182 Or. App. 452, 50 P.3d 1179 (2002), opinion modified on reconsideration on other grounds, 184 Or. App. 111, 55 P.3d 531 (2002).
- ⁹ Dingle v. District of Columbia, 571 F. Supp. 2d 87 (D.D.C. 2008); Roberts v. Coleman, 228 Or. 286, 365 P.2d 79 (1961).
- ¹⁰ § 17.
- ¹¹ Smith v. Knight, 907 So. 2d 831 (La. Ct. App. 2d Cir. 2005); Smith v. Magnolia Lady, Inc., 925 So. 2d 898 (Miss. Ct. App. 2006).
As to the effect of voluntary submission, see § 18.
- ¹² Foley v. Polaroid Corp., 400 Mass. 82, 508 N.E.2d 72 (1987).
- ¹³ Copantitla v. Fiskardo Estiatorio, Inc., 788 F. Supp. 2d 253 (S.D. N.Y. 2011) (applying New York law); Foley v. Polaroid Corp., 400 Mass. 82, 508 N.E.2d 72 (1987) (discharge from employment at will).

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- 2. Detention or Restraint

§ 17. Force or threats as element of detention or restraint for purposes of false imprisonment or arrest in civil actions—Necessity of apprehension

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Forms

Forms relating to apprehension, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Although the confinement or restraint necessary to create liability for false arrest or imprisonment may be imposed by an express or implied threat, as well as by actual force,¹ if no force is used, there must be a reasonable apprehension of force² which may exist by reason of the wrongdoer's assertion of legal authority.³ The words or actions must be such as to induce a reasonable apprehension of force,⁴ and the means of coercion must be present.⁵ However, false imprisonment does not exist if the words or conduct do not impose confinement upon the plaintiff or do not induce a reasonable apprehension that force will be used to effect a confinement.⁶ Thus, to be actionable, the defendant's actions or words must furnish a basis for a reasonable apprehension of present confinement, and this requirement is not subjective.⁷ The relationship of the parties and the circumstances surrounding the incident bear on the question whether particular words or acts have inspired a just fear of injury to the person, reputation, or property.⁸

While threats of future action,⁹ such as to call the police and have the plaintiff arrested,¹⁰ institute criminal proceedings against him or her,¹¹ or discharge an employee¹² are not ordinarily sufficient in themselves to create a reasonable apprehension that force would be used to effect an unlawful imprisonment, they may influence the assessment of damages.¹³

Unless it is clear that there is no reasonable apprehension of force, it is a question for the jury whether the submission was a

§ 17. Force or threats as element of detention or restraint..., 32 Am. Jur. 2d False...

voluntary act or brought about by fear that force would be used.¹⁴ In resolving this question, the jury is at liberty to consider not only the actual words spoken, but also the participants' sex, physical demeanor, and relative size, age, and experience.¹⁵

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Footnotes

¹ § 16.

² Benjamin v. Sparks, 173 F. Supp. 3d 272, 335 Ed. Law Rep. 813 (E.D. N.C. 2016) (applying North Carolina law); Miraliakbari v. Pennicooke, 254 Ga. App. 156, 561 S.E.2d 483 (2002).

³ §§ 24, 25.

⁴ Dingle v. District of Columbia, 571 F. Supp. 2d 87 (D.D.C. 2008).

⁵ West v. King's Dept. Store, Inc., 321 N.C. 698, 365 S.E.2d 621 (1988); W.T. Grant Co. v. Owens, 149 Va. 906, 141 S.E. 860 (1928).

⁶ Grayson Variety Store, Inc. v. Shaffer, 402 S.W.2d 424 (Ky. 1966); Safeway Stores, Inc. v. Amburn, 388 S.W.2d 443 (Tex. Civ. App. Fort Worth 1965).

⁷ Weishapl v. Sowers, 771 A.2d 1014 (D.C. 2001).

⁸ Black v. Kroger Co., 527 S.W.2d 794 (Tex. Civ. App. Houston 1st Dist. 1975), dismissed, (Jan. 14, 1976) (employee accused of theft by employer's agents).

⁹ Roberts v. Coleman, 228 Or. 286, 365 P.2d 79 (1961).

¹⁰ Sweeney v. F.W. Woolworth Co., 247 Mass. 277, 142 N.E. 50, 31 A.L.R. 311 (1924); Blumenfeld v. Harris, 3 A.D.2d 219, 159 N.Y.S.2d 561 (1st Dep't 1957), judgment aff'd, 3 N.Y.2d 905, 167 N.Y.S.2d 925, 145 N.E.2d 871 (1957).

¹¹ Priddy v. Bunton, 177 S.W.2d 805 (Tex. Civ. App. El Paso 1943), writ refused.

¹² Miraliakbari v. Pennicooke, 254 Ga. App. 156, 561 S.E.2d 483 (2002).

¹³ West v. King's Dept. Store, Inc., 321 N.C. 698, 365 S.E.2d 621 (1988).

¹⁴ Limited Stores, Inc. v. Wilson-Robinson, 317 Ark. 80, 876 S.W.2d 248 (1994) (effect of store employees' conduct toward shopper); Jorgensen v. Pennsylvania R. Co., 25 N.J. 541, 138 A.2d 24, 72 A.L.R.2d 1415 (1958).

¹⁵ Black v. Kroger Co., 527 S.W.2d 794 (Tex. Civ. App. Houston 1st Dist. 1975), dismissed, (Jan. 14, 1976).

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B. Elements

2. Detention or Restraint

§ 18. Involuntary submission to restraint as element of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A restraint or confinement that is not against the plaintiff's will is not a false imprisonment;¹ the restraint must be involuntary.² There is no imprisonment if the plaintiff voluntarily agrees to be in a certain place,³ as when a person voluntarily complies with a request to remain on the premises.⁴

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¹ [Grayson Variety Store, Inc. v. Shaffer](#), 402 S.W.2d 424 (Ky. 1966); [Rankin v. Venator Group Retail, Inc.](#), 93 S.W.3d 814 (Mo. Ct. App. E.D. 2002).

² [Rankin v. Venator Group Retail, Inc.](#), 93 S.W.3d 814 (Mo. Ct. App. E.D. 2002); [Wilkerson v. Duke University](#), 229 N.C. App. 670, 748 S.E.2d 154, 297 Ed. Law Rep. 550 (2013).
As to consent as a defense to an action for false imprisonment, see § 53.

³ [Sharp v. Cleveland Clinic](#), 176 Ohio App. 3d 226, 2008-Ohio-1777, 891 N.E.2d 809 (11th Dist. Trumbull County 2008).

⁴ [McLaurin v. Waffle House, Inc.](#), 178 F. Supp. 3d 536 (S.D. Tex. 2016) (applying Texas law).

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- 2. Detention or Restraint

§ 19. “Deprogramming” member of religious sect as element of detention or restraint for purposes of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  5

An action may be brought on false imprisonment and other theories of recovery based on efforts made to prompt an individual's disaffiliation from a religious sect,¹ which is sometimes referred to as deprogramming.² Evidence that a plaintiff has been abducted and confined against his or her will for days, without any reasonable means of escape, is sufficient to establish liability for false imprisonment under circumstances of attempted deprogramming, particularly where the plaintiff is confined beyond the time required to deliver one to lawful authorities, and lawful alternatives such as civil commitment are not used.³ The existence of a guardianship over the person confined is not necessarily dispositive of that person's false imprisonment claim.⁴

Recovery may be denied where there is evidence that the subject of deprogramming efforts has assented to the deprivation of liberty.⁵

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¹ [Peterson v. Sorlien](#), 299 N.W.2d 123, 11 A.L.R.4th 208 (Minn. 1980).

² [Weiss v. Patrick](#), 453 F. Supp. 717 (D.R.I. 1978), aff'd, 588 F.2d 818 (1st Cir. 1978).

³ [Eilers v. Coy](#), 582 F. Supp. 1093 (D. Minn. 1984).

⁴ [Taylor v. Gilmartin](#), 686 F.2d 1346 (10th Cir. 1982).

⁵ [Peterson v. Sorlien](#), 299 N.W.2d 123, 11 A.L.R.4th 208 (Minn. 1980).

§ 19. “Deprogramming” member of religious sect as..., 32 Am. Jur. 2d False...

As to voluntary submission to confinement, see [§ 18](#).

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B. Elements

2. Detention or Restraint

§ 20. Failure to assist escape as element of false imprisonment or arrest in civil actions

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West's Key Number Digest, [False Imprisonment](#)  5

If a person has induced another to go in a place that is impossible to leave without the inducer's assistance, by words or other conduct that gives the other person reason to believe that such assistance would be given when it is needed, the refusal to do so, if for the purpose of detaining the other person, is a sufficient act of confinement to make the inducer liable for false imprisonment.¹ It is generally held, however, that the mere refusal of permission on the part of an employer to allow an employee to leave the premises during the ordinary working hours, or a failure to provide prompt facilities to enable the employee to leave, does not constitute false imprisonment.² Similarly, it is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he or she is aware merely because it entails a slight inconvenience.³

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Footnotes

¹ Restatement Second, Torts § 45, comment a.

² *Davis & Allcott Co. v. Boozer*, 215 Ala. 116, 110 So. 28, 49 A.L.R. 1307 (1926) (employee complained of illness); *Weiler v. Herzfeld-Phillipson Co.*, 189 Wis. 554, 208 N.W. 599 (1926) (while employee questioned about accounts).

³ *Zavala v. Wal Mart Stores Inc.*, 691 F.3d 527 (3d Cir. 2012).

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B. Elements

3. Unlawfulness of Detention or Restraint

a. In General

§ 21. Unlawfulness of detention or restraint as element of false imprisonment or arrest in civil actions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, False Imprisonment  7(1)

Forms

Forms relating to arrests by police officer with or without legal process, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Mere loss of freedom does not constitute false imprisonment, even though it is unjust;¹ the imprisonment, confinement, or restraint must be unlawful.² Any intentional restraint by one person of the personal liberty of another is unlawful, unless justified by some valid authority or right.³ The lawfulness of the detention may depend on whether the defendant's actions were objectively reasonable in their nature, purpose, extent, and duration.⁴

There is no cause of action, if the imprisonment is under legal authority.⁵ Thus, a false imprisonment action may not be maintained where the detention was executed by virtue of legally sufficient process issued by a court of competent jurisdiction.⁶ As otherwise stated, a detention, otherwise unlawful, is privileged, with respect to a claim of false arrest or false imprisonment, where the confinement was by arrest under a valid process issued by a court having jurisdiction.⁷ It does not matter how corrupt the motives of the person suing out the process or how unfounded the imprisonment may be;⁸ the process in question need only be facially valid.⁹ Furthermore, if there was no valid process authorizing the detention, liability depends upon whether the detention was legally authorized under the circumstances.¹⁰ False imprisonment ends once the victim becomes held pursuant to legal process.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) agents' decision to arrest arrestee and his son based on mistaken belief that suspect had placed illegal firearms in arrestee's truck was reasonable and would not give rise to false imprisonment liability under Puerto Rico law, and thus United States was not liable for arresting agents' actions under Federal Tort Claims Act (FTCA); temporal proximity of radio operator's statement that suspect had left post office with package containing illegal firearms and statement that arrestee's truck was leaving parking lot led agent to believe that firearms had been placed in truck, and even if agent had seen son return from post office with only a few envelopes, his suspicion was based on radio communications, not observation of son's activity. [28 U.S.C.A. §§ 1346, 2671 et seq.](#) *Soto-Cintron on behalf of A.S.M. v. United States*, 901 F.3d 29 (1st Cir. 2018).

[END OF SUPPLEMENT]

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Footnotes

¹ *City of McMechen ex rel. Willey v. Fidelity & Cas. Co. of N. Y.*, 145 W. Va. 660, 116 S.E.2d 388 (1960).

² *Cahaly v. Larosa*, 796 F.3d 399 (4th Cir. 2015) (applying South Carolina law); *Pinnock v. City of New Haven*, 553 F. Supp. 2d 130 (D. Conn. 2008) (applying Connecticut law); *Garcia v. Carnival Corp.*, 838 F. Supp. 2d 1334 (S.D. Fla. 2012) (applying Florida law).

As to the two essential elements being the detention and its unlawfulness, see § 7.

³ *Maxwell v. Maxwell*, 189 Iowa 7, 177 N.W. 541, 10 A.L.R. 482 (1920); *Moore v. City of Detroit*, 252 Mich. App. 384, 652 N.W.2d 688 (2002).

As to justification based on exercise of rights or duties, see § 60.

⁴ *Lee v. MGM Resorts Mississippi, Inc.*, 200 So. 3d 1129 (Miss. Ct. App. 2016), cert. denied, 203 So. 3d 598 (Miss. 2016).

⁵ *Clack v. Torre*, 970 F. Supp. 2d 69 (D. Conn. 2013) (applying Connecticut law); *Harder v. Edwards*, 174 So. 3d 524 (Fla. 4th DCA 2015).

⁶ *Pete v. Metcalfe*, 8 F.3d 214 (5th Cir. 1993); *Stern v. Thompson & Coates, Ltd.*, 185 Wis. 2d 220, 517 N.W.2d 658 (1994).

As to the defense of justification based upon process, see §§ 76 to 87.

⁷ *Sinagra v. City of New York*, 38 Misc. 3d 234, 953 N.Y.S.2d 466 (Sup 2012), order aff'd, 127 A.D.3d 729, 7 N.Y.S.3d 286 (2d Dep't 2015), leave to appeal denied, 27 N.Y.3d 908, 36 N.Y.S.3d 622, 56 N.E.3d 902 (2016).

⁸ *Davis v. Wallace*, 310 Ga. App. 340, 713 S.E.2d 446 (2011).

⁹ *Harder v. Edwards*, 174 So. 3d 524 (Fla. 4th DCA 2015).

¹⁰ *Erfani v. Bishop*, 251 Ga. App. 20, 553 S.E.2d 326 (2001).

As to the justification of a warrantless arrest, generally, see § 71.

¹¹ *Zanfardino v. City of New York*, 230 F. Supp. 3d 325 (S.D. N.Y. 2017).

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32 Am. Jur. 2d False Imprisonment § 22

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

a. In General

§ 22. Unlawful detention of witnesses as element of false imprisonment or arrest in civil actions

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  7(1)

The wrongful detention of a witness, who expresses readiness to appear when needed, is unlawful.¹ On the other hand, officers acting properly in the execution of a warrant for a material witness do not act tortiously.²

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Footnotes

¹ [New York, P. & N. R. Co. v. Waldron](#), 116 Md. 441, 82 A. 709 (1911); [Daniel v. Phillips Petroleum Co.](#), 229 Mo. App. 150, 73 S.W.2d 355 (1934).

² [Arnsberg v. U.S.](#), 757 F.2d 971 (9th Cir. 1985).

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B. Elements

3. Unlawfulness of Detention or Restraint

a. In General

§ 23. Effect of plaintiff's subsequent acquittal or discharge as to unlawfulness of detention or restraint in civil false imprisonment or arrest actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  7(5)

According to some courts, a plaintiff can under no circumstances recover for false arrest if the plaintiff is later convicted,¹ and a guilty plea, even if to a lesser included offense under the charged violation, is fatal to a false arrest claim.² The same is true of an arrestee's participation in a pretrial rehabilitation program.³ According to other courts, however, the plaintiff alleging false arrest need not allege the favorable termination of a criminal prosecution.⁴ In fact, the guilt or innocence of the person arrested is irrelevant in a false arrest case, if the arrest is illegal or unjustified,⁵ and a subsequent acquittal or discharge is of no consequence in determining the validity of the arrest itself.⁶ Consequently, a plaintiff's acceptance of an adjournment in contemplation of dismissal does not interdict an action for false imprisonment.⁷

Conversely, one may be acquitted upon the merits of the case, or discharged upon some question of law, but that does not itself make the restraint false imprisonment.⁸ For example, the fact that criminal charges are eventually nolle prossed does not save a claim of false imprisonment upon a finding of probable cause to arrest.⁹ Moreover, a peace officer who arrests someone with probable cause is not liable for false arrest¹⁰ or false imprisonment¹¹ simply because the suspect's innocence is later proved. One seeking to establish a claim for wrongful imprisonment must produce more evidence than a judgment of acquittal, which is merely a judicial finding that the state did not prove its case beyond a reasonable doubt, but must affirmatively establish innocence.¹²

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Footnotes

¹ [Applewhaite v. Shinton](#), 859 F. Supp. 2d 157 (D.D.C. 2012); [Case v. City of New York](#), 233 F. Supp. 3d 372 (S.D.

N.Y. 2017).

² [Tretola v. County of Nassau](#), 14 F. Supp. 3d 58 (E.D. N.Y. 2014).

³ [Murphy v. Kearney](#), 2010 WL 2640041 (D. Conn. 2010) (program did not create “favorable termination” of arrestee’s criminal charge).

⁴ [Johnson v. Ralphs Grocery Co.](#), 204 Cal. App. 4th 1097, 139 Cal. Rptr. 3d 396 (4th Dist. 2012); [Bayer v. Township of Union](#), 414 N.J. Super. 238, 997 A.2d 1118 (App. Div. 2010).

⁵ [Peterson Novelties, Inc. v. City of Berkley](#), 259 Mich. App. 1, 672 N.W.2d 351 (2003).

⁶ [Marx v. Gumbinner](#), 905 F.2d 1503 (11th Cir. 1990).

⁷ [Eke v. City of New York](#), 116 A.D.3d 403, 984 N.Y.S.2d 6 (1st Dep’t 2014).

⁸ [Coverstone v. Davies](#), 38 Cal. 2d 315, 239 P.2d 876 (1952); [People v. Edge](#), 406 Ill. 490, 94 N.E.2d 359 (1950).

⁹ [Johnson v. Crocker](#), 881 F. Supp. 2d 615 (D. Del. 2012).

¹⁰ [Salazar v. Upland Police Dept.](#), 116 Cal. App. 4th 934, 11 Cal. Rptr. 3d 22 (4th Dist. 2004).

¹¹ [Verdier v. Borough](#), 796 F. Supp. 2d 606 (E.D. Pa. 2011) (applying Pennsylvania law).

¹² [State ex rel. Jones v. Suster](#), 84 Ohio St. 3d 70, 1998-Ohio-275, 701 N.E.2d 1002 (1998).

32 Am. Jur. 2d False Imprisonment § 24

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False Imprisonment
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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(1) In Making Arrest

§ 24. Illegality in making arrest as element of false imprisonment or arrest in civil actions, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 7(1)

In an action for false arrest or imprisonment, the critical question is whether the arrest was made in conformance to the rules governing the validity of an arrest.¹ The plaintiff must show that the arrest was not legal, in the sense that it was not based on probable cause,² and if probable cause exists, the subsequent arrest is lawful and there is no false arrest.³ In other words, an arrest based on probable cause cannot be the source of a claim for false arrest or false imprisonment.⁴ Moreover, if there is probable cause for any of the charges made, the arrest is supported by probable cause and the claim for false arrest fails.⁵ A police officer's subjective intent is immaterial.⁶

Although the critical issue with regard to a claim for false arrest is whether the police had probable cause to arrest the plaintiff at the time the plaintiff was arrested, and not whether the state had sufficient evidence to convict,⁷ a conviction is conclusive evidence of probable cause for purposes of an unlawful arrest claim, unless the judgment was obtained by fraud, perjury, or other corrupt means.⁸ Similarly, if an arrest is made pursuant to a warrant valid on its face, there is no false imprisonment,⁹ even if the warrant later turns out to be invalid.¹⁰ In such a situation, the conduct of the arresting officer is privileged and a claim will not lie.¹¹ However, liability may arise for an arrest made under circumstances or in a manner not authorized by law.¹²

Observation:

Even when there exists sufficient facts giving rise to probable cause to support an arrest, the failure to make further inquiry when a

reasonable person would have done so may negate the same and makes probable cause an issue of fact in an action for false imprisonment, rather than one to be decided as a matter of law.¹³

CUMULATIVE SUPPLEMENT

Cases:

A facially valid warrant that proves to lack probable cause does not make the initial arrest unlawful for the purposes of the tort of false arrest. [U.S. Const. Amend. 4. Carter v. Bryant, 429 S.C. 298, 838 S.E.2d 523 \(Ct. App. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

¹ [Dillon v. Haskell, 78 Cal. App. 2d 814, 178 P.2d 462 \(2d Dist. 1947\); Rife v. D.T. Corner, Inc., 641 N.W.2d 761 \(Iowa 2002\)](#) (citizen's arrest).

The law governing the manner of making an arrest is generally discussed in [Am. Jur. 2d, Arrest §§ 67 to 102](#).

² [Hoover v. Walsh, 682 F.3d 481 \(6th Cir. 2012\)](#) (applying Michigan law); [Zerbe v. Town of Carencro, 884 So. 2d 1224 \(La. Ct. App. 3d Cir. 2004\)](#), writ denied, [889 So. 2d 270 \(La. 2005\)](#) and writ denied, [889 So. 2d 271 \(La. 2005\)](#).

³ [Johnson v. Morris, 453 N.W.2d 31 \(Minn. 1990\).](#)
As to arrests without a warrant, see §§ [71 to 75](#).

⁴ [Grubbs v. University of Delaware Police Department, 174 F. Supp. 3d 839 \(D. Del. 2016\).](#)

⁵ [Brown v. United States Postal Inspection Service, 206 F. Supp. 3d 1234 \(S.D. Tex. 2016\).](#)

⁶ [Ex parte Harris, 216 So. 3d 1201 \(Ala. 2016\).](#)

⁷ [Jeansonne v. City of Marksville, 180 So. 3d 608 \(La. Ct. App. 3d Cir. 2015\), writ denied, 191 So. 3d 1032 \(La. 2016\) and writ denied, 191 So. 3d 1036 \(La. 2016\).](#)

⁸ [Behm v. Campbell, 925 So. 2d 1070 \(Fla. 5th DCA 2006\).](#)

⁹ [Willingham v. City of Orlando, 929 So. 2d 43 \(Fla. 5th DCA 2006\); Horton v. Chamberlain, 152 Vt. 351, 566 A.2d 953 \(1989\).](#)

¹⁰ [Rustici v. Weidemeyer, 673 S.W.2d 762 \(Mo. 1984\).](#)
As to defense of justification based upon legal process, see § [80](#).

¹¹ [Brown v. Metro Transit Police Department, 87 F. Supp. 3d 145 \(D.D.C. 2015\), aff'd, 637 Fed. Appx. 3 \(D.C. Cir. 2016\).](#)

¹² [Coffee v. Peterbilt of Nashville, Inc., 795 S.W.2d 656 \(Tenn. 1990\)](#) (warrant issued by a court without jurisdiction over the charged offense); [Lane v. Collins, 29 Wis. 2d 66, 138 N.W.2d 264 \(1965\).](#)

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[Thompson v. City of New York, 50 Misc. 3d 1037, 23 N.Y.S.3d 839 \(Sup 2015\).](#)

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32 Am. Jur. 2d False Imprisonment § 25

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(1) In Making Arrest

§ 25. Acts preliminary to arrest as elements of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Construction and Application of [Illinois v. Lidster](#), 540 U.S. 419, 124 S. Ct. 885, 157 L. Ed. 2d 843 (2004), Governing Validity of Police Roadblock, Checkpoint, or Other Detention of Vehicle for Gathering of Information, 78 A.L.R.6th 213

Liability for false imprisonment may arise before an arrest is made, and be based on an abuse of official authority in making an investigation,¹ execution of a search warrant and detention during the process of its execution,² or detention at a sobriety roadblock.³ However, police officers' duties to conduct an adequate investigation and determine probable cause to arrest do not include the risk of liability for such consequences as conviction and lengthy incarceration, absent evidence of malice or a deliberate intent to suppress exculpatory evidence, or otherwise mislead the court.⁴

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Footnotes

¹ [Ware v. Dunn](#), 80 Cal. App. 2d 936, 183 P.2d 128 (2d Dist. 1947).

² [Daniel v. Taylor](#), 808 F.2d 1401 (11th Cir. 1986).

³ Nelson v. Lane County, 304 Or. 97, 743 P.2d 692 (1987).

⁴ Jenkins v. Baldwin, 801 So. 2d 485 (La. Ct. App. 4th Cir. 2001).

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(1) In Making Arrest

§ 26. Arrest at unlawful or unreasonable time as element of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [False Imprisonment](#) 7(1)

An arrest at an unlawful or unreasonable time may result in liability for damages,¹ especially when combined with other elements of unlawfulness.²

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Footnotes

¹ [MacDonnell v. McConville](#), 148 A.D. 49, 132 N.Y.S. 1085 (1st Dep't 1911), aff'd, [210 N.Y. 529](#), 103 N.E. 1126 (1913).

² [Bryan v. Comstock](#), 143 Ark. 394, 220 S.W. 475, 9 A.L.R. 1346 (1920) (refusing to permit a driver to make bail, and unwillingness to disturb a magistrate).

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(1) In Making Arrest

§ 27. Failure to declare authority and intention to arrest as element of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [False Imprisonment](#) 7(1)

A failure to comply with a statutory duty to notify a suspect of the officer's purpose and official capacity and the cause of the arrest may deprive the person making the arrest of an otherwise applicable privilege or justification for the arrest,¹ unless there is a showing of circumstances relieving the officer or other arresting person from compliance.² However, the officer's failure to convey such information, even when required by statute, does not necessarily impose liability on the officer for false imprisonment,³ where it does not affect the validity of the arrest.⁴

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Footnotes

¹ [McFarland v. Skaggs Companies, Inc.](#), 678 P.2d 298 (Utah 1984).

² [Sprague v. City of Burley](#), 109 Idaho 656, 710 P.2d 566 (1985) (jury question).

³ [Elliott v. Haskins](#), 20 Cal. App. 2d 591, 67 P.2d 698 (2d Dist. 1937).

⁴ [Bauldock v. Davco Food, Inc.](#), 622 A.2d 28 (D.C. 1993).

Works.

32 Am. Jur. 2d False Imprisonment § 28

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(1) In Making Arrest

§ 28. Use of excessive force as element of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, **False Imprisonment**  7(1)

Claims of excessive force are frequently joined with false imprisonment actions,¹ and an individual or municipality may be liable for damages for false arrest if the arrest is effectuated with excessive force.²

The determination of the reasonableness of the force utilized may influence or even be determinative on the existence of qualified immunity for an officer,³ or on the officer's qualified privilege for use of force during the arrest.⁴

Observation:

On overlapping claims of excessive force and unlawful arrest, if the amount of force used would have been reasonable to effect an arrest if an arrest had been justified, the damages for excessive force are subsumed within the damages for unlawful arrest; it is only when the force was excessive as compared to the execution of a lawful arrest that a plaintiff can recover on both claims.⁵

¹ Adams v. Metiva, 31 F.3d 375, 1994 FED App. 0277P (6th Cir. 1994); Renk v. City of Pittsburgh, 537 Pa. 68, 641 A.2d 289 (1994).

² Batiste v. City of Baton Rouge, 156 So. 3d 192 (La. Ct. App. 1st Cir. 2014), writ denied, 162 So. 3d 386 (La. 2015).

³ Wardlaw v. Pickett, 1 F.3d 1297 (D.C. Cir. 1993).

⁴ Etheredge v. District of Columbia, 635 A.2d 908, 33 A.L.R.5th 795 (D.C. 1993).

⁵ Sisneros v. Fisher, 685 F. Supp. 2d 1188 (D.N.M. 2010).

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32 Am. Jur. 2d False Imprisonment § 29

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(2) Following Arrest

§ 29. Delay in presentment before magistrate as element of false imprisonment or arrest in civil actions

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West's Key Number Digest, [False Imprisonment](#)  8

A.L.R. Library

[Intoxication as ground for police postponing arrestee's appearance before magistrate, 3 A.L.R.4th 1057](#)

[Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment, 98 A.L.R.2d 966](#)

Trial Strategy

[False Imprisonment—Failure to Take Arrestee Before Magistrate without Unreasonable or Unnecessary Delay, 26 Am. Jur. Proof of Facts 2d 617](#)

Forms

Forms relating to illegal detention after arrest, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment[Westlaw®(r) Search Query]

A police officer can be liable for false imprisonment based on a prolongation of the imprisonment after the arrest.¹ In fact, an action for false imprisonment may arise, even if an arrest was lawful in its inception, if there was an unnecessary delay in arraigning the plaintiff.² Thus, an arresting officer who fails to take the arrested person before a court or magistrate within a reasonable time or without unnecessary delay is guilty of false imprisonment.³ An officer who arrests a person without a warrant is liable for false imprisonment by detaining the prisoner an unreasonable time without securing a warrant or other legal authority for detention,⁴ or presenting the prisoner before a magistrate.⁵ A reasonable period of continued detention for the purpose of bringing the arrested person before a magistrate is allowed before incurring liability.⁶ Moreover, recovery may be precluded if the person waived the right to complain about the delay in presentment before a magistrate⁷ or obtained bail.⁸

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Footnotes

- ¹ [Bocanegra v. Jakubowski](#), 241 Cal. App. 4th 848, 194 Cal. Rptr. 3d 327 (4th Dist. 2015), review denied, (Feb. 17, 2016).
- ² [Murray v. City of New York](#), 74 A.D.3d 550, 903 N.Y.S.2d 34 (1st Dep’t 2010).
- ³ [Oviatt By and Through Waugh v. Pearce](#), 954 F.2d 1470 (9th Cir. 1992) (114-day delay, due to clerical error); [Nelson v. City of Las Vegas](#), 99 Nev. 548, 665 P.2d 1141 (1983).
- ⁴ [Dragna v. White](#), 45 Cal. 2d 469, 289 P.2d 428 (1955); [Clark v. Kelly](#), 101 W. Va. 650, 133 S.E. 365, 46 A.L.R. 799 (1926).
- ⁵ [McFarland v. Skaggs Companies, Inc.](#), 678 P.2d 298 (Utah 1984).
- ⁶ [Thompson v. Olson](#), 798 F.2d 552 (1st Cir. 1986).
- ⁷ § 56.
- ⁸ § 56.

32 Am. Jur. 2d False Imprisonment § 30

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(2) Following Arrest

§ 30. Delay in presentment before magistrate as element of false imprisonment or arrest in civil actions—Extent of liability

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An unreasonable delay after a lawful arrest may only subject the officer to liability for so much of the imprisonment as could have been prevented had the officer exercised due diligence in bringing the arrested person before a magistrate.¹ Even if an arrest is made pursuant to valid legal process and thus does not give rise to a claim of false arrest, imprisonment following the arrest may become unlawful if the plaintiff establishes that the delay following the arrest was unlawful and that the conduct of those effecting the delay was unreasonable.² However, if a legal arrest is made for the purpose of accomplishing some subsequent wrongful act, a failure to bring the defendant before a magistrate within a reasonable time may render the officer liable from the arrest.³

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Footnotes

¹ [Dragna v. White](#), 45 Cal. 2d 469, 289 P.2d 428 (1955); [Anderson v. Foster](#), 73 Idaho 340, 252 P.2d 199 (1953).

² [Nelson v. City of Las Vegas](#), 99 Nev. 548, 665 P.2d 1141 (1983) (jury question was presented, in view of the detainee's continuing attempts to pay the bail).

³ [Shaw v. Courtney](#), 317 Ill. App. 422, 46 N.E.2d 170 (1st Dist. 1943), judgment aff'd, 385 Ill. 559, 53 N.E.2d 432 (1944); [Brown v. Meier & Frank Co.](#), 160 Or. 608, 86 P.2d 79 (1939).

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(2) Following Arrest

§ 31. Denial of opportunity to post bail as element of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Intoxication as ground for police postponing arrestee's appearance before magistrate, 3 A.L.R.4th 1057](#)

[Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment, 98 A.L.R.2d 966](#)

One making an arrest may be liable in an action for false imprisonment for wrongfully denying the prisoner an opportunity to give bond.¹ In fact, even if police officers have probable cause to conduct an arrest, it will not preclude the arrestee's cause of action against the police officers for false imprisonment, based on allegations that the arrestee was incarcerated without bond, where the offense is not a nonbondable offense.² However, the arresting officer is not liable for the period of confinement after a magistrate's refusal to accept bail and release the prisoner.³

In addition to the arresting officer, any person who aids in the denial of the opportunity to obtain bail may be liable for false imprisonment.⁴ A jailer may be liable for false imprisonment for refusing to permit the prisoner to secure release on bail.⁵

What amounts to reasonable diligence in affording the prisoner an opportunity to make bail depends on the circumstances of

§ 31. Denial of opportunity to post bail as element of..., 32 Am. Jur. 2d False...

the individual case, including the time of day the arrest was made, the prisoner's condition, and the prisoner's ability and readiness to give a sufficient bond.⁶ For instance, a failure to give a person arrested for drunkenness in a public place an opportunity to give bail does not become unreasonable until the person is restored to a degree of sobriety, which would guarantee against immediately being rearrested.⁷

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- ¹ [Bryan v. Comstock](#), 143 Ark. 394, 220 S.W. 475, 9 A.L.R. 1346 (1920); [Mullins v. Sanders](#), 189 Va. 624, 54 S.E.2d 116 (1949).
- ² [Smart v. City of Miami](#), 107 F. Supp. 3d 1271 (S.D. Fla. 2015).
- ³ [Anderson v. Foster](#), 73 Idaho 340, 252 P.2d 199 (1953).
- ⁴ [Andersen v. Spencer](#), 229 Iowa 595, 294 N.W. 904 (1940); [Harbison v. Chicago, R. I. & P. Ry. Co.](#), 327 Mo. 440, 37 S.W.2d 609, 79 A.L.R. 1 (1931) (induces the officer).
- ⁵ [Oppenheimer v. City of Los Angeles](#), 104 Cal. App. 2d 551, 232 P.2d 30 (2d Dist. 1951). As to the liability of a jailer, generally, see § 38.
- ⁶ [Harbison v. Chicago, R. I. & P. Ry. Co.](#), 327 Mo. 440, 37 S.W.2d 609, 79 A.L.R. 1 (1931).
- ⁷ [Sheffield v. Reece](#), 201 Miss. 133, 28 So. 2d 745 (1947).

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

b. Conduct Making Arrest Unlawful

(2) Following Arrest

§ 32. Delay in releasing prisoner as element of false imprisonment or arrest in civil actions

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  8

Forms

Forms relating to delay or refusal to release prisoner, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Unreasonable delay in releasing a person after he or she has a right to be released may constitute false imprisonment.¹ In other words, when a legal duty exists to release an individual from confinement, the intentional refusal to release the individual constitutes false imprisonment.² However, there is no liability for prolonging detention until the officer becomes convinced of the truth of the detainee's claim.³ Furthermore, the test for false imprisonment by a police officer based on a prolongation of imprisonment after an improper arrest requires either that the officer have actual knowledge that the imprisonment of the plaintiff is unlawful or alternatively that the officer have some notice sufficient to put the officer, as a reasonable person, under a duty to investigate the validity of the incarceration.⁴ In any case, in some jurisdictions, a public defender or clerk of the court will not be liable for an alleged failure to help procure a detainee's release after criminal charges are dismissed, absent allegations that they directly restrained the detainee's physical liberty.⁵

Although the length of the delay is relevant,⁶ other matters are also considered in determining the reasonableness of the delay, including administrative steps to be taken, the number of people to be processed, transportation, booking and filing charges, and paperwork.⁷

CUMULATIVE SUPPLEMENT

Cases:

Arrestee, an alien who was a Mexican citizen, stated false imprisonment claim under Minnesota law regarding continued detention, by alleging that arrestee was unlawfully detained after she was cleared for release with respect to warrantless misdemeanor arrest for traffic violation of driving without a driver's license, that city lacked probable cause to detain arrestee on account of her immigration status, that continued detention was willful or malicious, and that city had an unofficial policy or custom of arresting Hispanic motorists simply to place them in immigration custody. [U.S. Const. Amend. 4. Parada v. Anoka County](#), 332 F. Supp. 3d 1229 (D. Minn. 2018).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Walton v. Will](#), 66 Cal. App. 2d 509, 152 P.2d 639 (2d Dist. 1944); [Tufte v. City of Tacoma](#), 71 Wash. 2d 866, 431 P.2d 183 (1967) (diabetic prisoner in "drunk tank").
As to liability of jailer, see § 38.
- ² [Vumbaca v. Terminal One Group Ass'n L.P.](#), 859 F. Supp. 2d 343 (E.D. N.Y. 2012) (applying New York law).
- ³ [Thompson v. Olson](#), 798 F.2d 552 (1st Cir. 1986) (detainee was held until officers became convinced that the detainee was a diabetic and not intoxicated, after finding a medical alert notice).
- ⁴ [Bocanegra v. Jakubowski](#), 241 Cal. App. 4th 848, 194 Cal. Rptr. 3d 327 (4th Dist. 2015), review denied, (Feb. 17, 2016).
- ⁵ [Harbeck v. Smith](#), 814 F. Supp. 2d 608 (E.D. Va. 2011) (applying Virginia law).
- ⁶ [Thornhill v. Wilson](#), 504 So. 2d 1205 (Miss. 1987) (five-minute delay reasonable).
- ⁷ [Lewis v. O'Grady](#), 853 F.2d 1366 (7th Cir. 1988).

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I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

c. Commitment of Mentally Ill Person

§ 33. Commitment of mentally ill person pursuant to valid legal proceeding as negating claim of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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A.L.R. Library

Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings, 30
A.L.R.3d 523

Trial Strategy

[Wrongful Confinement to a Mental Health or Developmental Disabilities Facility](#), 44 Am. Jur. Proof of Facts 3d 217

Forms

Forms relating to commitment of insane or mentally ill, generally, see Am. Jur. Pleading and Practice Forms, False

Imprisonment[Westlaw®(r) Search Query]

A person confined pursuant to an authorized mental health commitment proceeding or process may not recover damages in a false imprisonment action.¹ In accordance with the general rule dealing with confinement under process,² even where the order of commitment is erroneously made, but is valid on its face and issued by a court of competent jurisdiction, the detention is not false imprisonment.³

State hospital officials have no duty to examine the form of the report of the examining psychiatrists upon which an order of commitment was based, nor is there any duty to examine or investigate a commitment order valid on its face, unless there is knowledge that there was, in fact, no basis for implementing the order.⁴

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Footnotes

¹ Beaumont v. Segal, 362 Mass. 30, 283 N.E.2d 858 (1972); Patrich v. Menorah Medical Center, 636 S.W.2d 134 (Mo. Ct. App. W.D. 1982); Lauer v. State, 57 A.D.2d 673, 393 N.Y.S.2d 813 (3d Dep't 1977).

² § 80.

³ Beitch v. State, 280 A.D. 855, 113 N.Y.S.2d 439 (3d Dep't 1952); Zuckerman v. Sanitarium Co., 92 Or. 90, 179 P. 911 (1919).

⁴ Bangs v. State, 41 A.D.2d 988, 343 N.Y.S.2d 976 (3d Dep't 1973).

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32 Am. Jur. 2d False Imprisonment § 34

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

B. Elements

3. Unlawfulness of Detention or Restraint

c. Commitment of Mentally Ill Person

§ 34. Improper commitment of mentally ill person as element of false imprisonment or arrest in civil actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  5

Trial Strategy

[Wrongful Confinement to a Mental Health or Developmental Disabilities Facility](#), 44 Am. Jur. Proof of Facts 3d 217

Liability for false imprisonment may be premised on an order of commitment being made without jurisdiction, because the statutory requirements for commitment were not followed,¹ as, for example, where the person to be committed is not given notice,² or if the doctor's statement or certificate is stale³ or does not comply with statutory requirements.⁴

Police officers committed both false arrest and false imprisonment where they seized a person for an emergency mental evaluation without probable cause.⁵

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Footnotes

¹ [Jillson v. Caprio](#), 181 F.2d 523 (D.C. Cir. 1950) (psychiatrist liable as instigator).

² [Troutman v. State](#), 273 A.D. 619, 79 N.Y.S.2d 709 (3d Dep't 1948).

³ Arthur v. Lutheran General Hosp., Inc., 295 Ill. App. 3d 818, 230 Ill. Dec. 72, 692 N.E.2d 1238 (1st Dist. 1998).

⁴ Welch v. County of Westchester, 150 A.D.2d 371, 540 N.Y.S.2d 820 (2d Dep't 1989); Samons v. Meymandi, 9 N.C. App. 490, 177 S.E.2d 209 (1970).

⁵ Bailey v. Kennedy, 349 F.3d 731 (4th Cir. 2003).

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I. Civil Actions

C. Liability of Particular Persons

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 7(3), 7(4), 8, 15(1) to 15(3)

A.L.R. Library

A.L.R. Index, False Imprisonment and Arrest

West's A.L.R. Digest, [False Imprisonment](#) 7(3), 7(4), 8, 15(1) to 15(3)

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32 Am. Jur. 2d False Imprisonment § 35

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

C. Liability of Particular Persons

1. In General

§ 35. Liability in civil action for false imprisonment or arrest of persons participating in or causing imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, **False Imprisonment**  7(3), 15(1)

All who personally participate in or proximately cause an unlawful detention are liable.¹ In fact, a defendant's personal involvement may be a basic prerequisite to certain false arrest claims.²

A defendant must have personally and actively participated in some aspect of that conduct to be found liable.³ A person who is neither active in the commission of the tort⁴ nor responsible for the acts of others is not liable for false imprisonment.⁵ Mere passive knowledge of, acquiescence in, or consent to the acts of another, for which one is not otherwise responsible,⁶ or merely acting on a superior's order,⁷ is not sufficient.

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Footnotes

¹ *(Blue) Star Service, Inc. v. McCurdy*, 36 Tenn. App. 1, 251 S.W.2d 139 (1952); *Winters v. Campbell*, 148 W. Va. 710, 137 S.E.2d 188 (1964).

As to procuring the arrest, generally, see § 39.

² *Cortes v. City of New York*, 148 F. Supp. 3d 248 (E.D. N.Y. 2015) (under 42 U.S.C.A. § 1983 and New York law).

³ *Sunshine Jr. Food Stores, Inc. v. Aultman By and Through Aultman*, 546 So. 2d 659 (Miss. 1989); *Godines by and through Godines v. First Guar. Sav. & Loan Ass'n*, 525 So. 2d 1321 (Miss. 1988).

⁴ *Director General of Railroads v. Kastenbaum*, 263 U.S. 25, 44 S. Ct. 52, 68 L. Ed. 146 (1923); *Lenaz v. Conway*, 234 Miss. 231, 105 So. 2d 762 (1958).

⁵ [Ingo v. Koch](#), 127 F.2d 667 (C.C.A. 2d Cir. 1942); [Plummer v. Northern Pac. Ry. Co.](#), 79 Mont. 82, 255 P. 18 (1927) (merely delivered prisoner arrested by others).

As to vicarious liability for false imprisonment, see §§ [47](#) to [51](#).

⁶ [Palmentere v. Campbell](#), 344 F.2d 234 (8th Cir. 1965); [Dugan v. Midwest Cap Co.](#), 213 Iowa 751, 239 N.W. 697 (1931).

⁷ [Vela v. White](#), 703 F.2d 147 (5th Cir. 1983).

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False Imprisonment

John Bourdeau, J.D.

I. Civil Actions

C. Liability of Particular Persons

1. In General

§ 36. Liability in civil action for false imprisonment or arrest of persons effecting arrest or imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  7(3), 15(1)

A.L.R. Library

[Liability of police or peace officers for false arrest, imprisonment, or malicious prosecution as affected by claim of suppression, failure to disclose, or failure to investigate exculpatory evidence](#), 81 A.L.R.4th 1031

[Truant or attendance officer's liability for assault and battery or false imprisonment](#), 62 A.L.R.2d 1328

Forms

Forms relating to arrest by private individual, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Forms relating to arrest by law enforcement officer, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

False arrest may be committed by a law enforcement officer, or one who claims the power to make an arrest.¹ A private person² or a police officer³ who effects an arrest may be held liable. A citizen's arrest, even if authorized by statute, may nonetheless result in liability for false imprisonment⁴ if it does not comply with all of the statute's requirements.⁵ However, to

hold a private individual liable, it must be shown that the individual restrained the plaintiff before the police arrived.⁶ A peace officer who accepts custody of a person following a citizen's arrest is not required to determine whether the arrest was justified, and may not be held liable if the arrest was improper.⁷

A school truant or attendance officer may be held liable for false imprisonment for taking a child into custody who was not truant within the meaning of a statute authorizing arresting truants without warrant.⁸

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Footnotes

¹ [Rife v. D.T. Corner, Inc.](#), 641 N.W.2d 761 (Iowa 2002); [Demelash v. Ross Stores, Inc.](#), 105 Wash. App. 508, 20 P.3d 447 (Div. 1 2001).

² [Moore v. City of Detroit](#), 252 Mich. App. 384, 652 N.W.2d 688 (2002); [Holmes v. Crossroads Joint Venture](#), 262 Neb. 98, 629 N.W.2d 511 (2001) (security officers handcuffed customer).

³ [Johnson v. City of Fayetteville](#), 91 F. Supp. 3d 775 (E.D. N.C. 2015) (applying North Carolina law); [Dragna v. White](#), 45 Cal. 2d 469, 289 P.2d 428 (1955).

⁴ [Yancey v. Farmer](#), 472 So. 2d 990 (Ala. 1985); [Kesmodel v. Rand](#), 119 Cal. App. 4th 1128, 15 Cal. Rptr. 3d 118 (2d Dist. 2004) (coconspirator to wrongful citizen's arrest).

⁵ [McMahon v. Albany Unified School Dist.](#), 104 Cal. App. 4th 1275, 129 Cal. Rptr. 2d 184, 172 Ed. Law Rep. 896 (1st Dist. 2002) (school superintendent who made lawful citizen's arrest not liable); [Nau v. Sellman](#), 104 Nev. 248, 757 P.2d 358 (1988).

⁶ [Kennedy v. Sheriff of East Baton Rouge](#), 935 So. 2d 669 (La. 2006) (no proof that restaurant employee detained patron during a dispute over tendering a counterfeit bill); [Holland v. Sebunya](#), 2000 ME 160, 759 A.2d 205 (Me. 2000) (defendant merely invoked legal process and did not attempt to remove the plaintiff from a meeting). As to liability for procuring the arrest, generally, see § 39.

⁷ [Hamburg v. Wal-Mart Stores, Inc.](#), 116 Cal. App. 4th 497, 10 Cal. Rptr. 3d 568 (1st Dist. 2004), as modified, (Mar. 3, 2004).

⁸ [Holmes v. Nester](#), 81 Ariz. 372, 306 P.2d 290, 62 A.L.R.2d 1322 (1957).

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

C. Liability of Particular Persons

1. In General

§ 37. Joint and several liability for false imprisonment or arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 15(1)

All who knowingly procure, direct, aid, abet or assist in effecting a false imprisonment are liable as joint tortfeasors for the damage done,¹ and may be joined as defendants without an allegation or proof of a conspiracy.² In other words, each person is equally responsible where several persons unite in the wrongful act constituting false imprisonment.³ Thus, more than one officer and more than one police department may be exposed to liability for an unlawful arrest and subsequent confinement.⁴

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Footnotes

¹ [Diamond 67, LLC v. Oatis](#), 167 Conn. App. 659, 144 A.3d 1055 (2016), certification denied, [323 Conn. 927](#), 150 A.3d 229 (2016) and certification denied, [323 Conn. 927](#), 150 A.3d 228 (2016) and certification denied, [323 Conn. 927](#), 150 A.3d 228 (2016) and certification denied, [323 Conn. 926](#), 150 A.3d 230 (2016) and certification denied, [323 Conn. 927](#), 150 A.3d 230 (2016).

² [Garcia v. City of Merced](#), 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law).

³ [Harrer v. Montgomery Ward & Co.](#), 124 Mont. 295, 221 P.2d 428 (1950); [S. H. Kress & Co. v. Bradshaw](#), 1940 OK 70, 186 Okla. 588, 99 P.2d 508 (1940).

⁴ [Qualey v. Town of Wilton](#), 540 A.2d 479 (Me. 1988).

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I. Civil Actions

C. Liability of Particular Persons

1. In General

§ 38. Liability of jailers in civil action for false imprisonment or arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 8

Forms

Forms relating to jailers, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A jailer is liable for the false imprisonment of an inmate when the jailer unreasonably detains the inmate for arraignment,¹ release,² to secure release on bail,³ or parole.⁴ The test for whether a jailer knew or should have known that the arrestee was mistakenly in custody is that the jailer have actual knowledge that the imprisonment or the arrest is unlawful or alternatively that the jailer have some notice sufficient to put him or her, as a reasonable person, under a duty to investigate the validity of the incarceration.⁵ A prisoner has no action against the imprisoning authority, however, where the continuing imprisonment is lawful, as where a prisoner's sentence is set aside but the conviction is upheld,⁶ or the prisoner is required to serve consecutive terms.⁷ Likewise, if the errors upon which liability is asserted take place beyond the scope of the jailer's responsibility, the jailer cannot be found liable where he or she has acted reasonably and in good faith.⁸

The general rule that all who take part or assist in the commission of a false imprisonment are joint tortfeasors⁹ applies to jailers.¹⁰ A jailer is liable for false imprisonment if the jailer knows or should know that an arrest was illegal¹¹ and that there is no right to imprison the person arrested.¹² The jailer's liability in this situation is based on wrongfully continuing the confinement.¹³

Mere notice to jail personnel that they might be holding the wrong person does not impose a duty on them to investigate the detainee's claims of misidentification so as to give rise to liability for false imprisonment.¹⁴

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Footnotes

- ¹ Chavez v. County of Bernalillo, 3 F. Supp. 3d 936 (D.N.M. 2014).
§ 29.
- ² Chavez v. County of Bernalillo, 3 F. Supp. 3d 936 (D.N.M. 2014); Stalter v. State, 151 Wash. 2d 148, 86 P.3d 1159 (2004).
- ³ § 31.
- ⁴ Harwood v. Johnson, 326 N.C. 231, 388 S.E.2d 439 (1990).
- ⁵ Castro v. City of Hanford, 546 F. Supp. 2d 822 (E.D. Cal. 2008) (applying California law).
- ⁶ Moore v. Zant, 264 Ga. 536, 448 S.E.2d 695 (1994).
- ⁷ Whipple v. Department of Corrections, State, 892 So. 2d 554 (Fla. 3d DCA 2005) (a reference in the sentencing order that the term was to be concurrent to that served in an unrelated case was irrelevant where the other term had already been served).
- ⁸ Chavez v. County of Bernalillo, 3 F. Supp. 3d 936 (D.N.M. 2014).
- ⁹ § 37.
- ¹⁰ Oppenheimer v. City of Los Angeles, 104 Cal. App. 2d 551, 232 P.2d 30 (2d Dist. 1951).
- ¹¹ Chavez v. County of Bernalillo, 3 F. Supp. 3d 936 (D.N.M. 2014).
- ¹² Abbott v. Cooper, 218 Cal. 425, 23 P.2d 1027 (1933).
- ¹³ Adair v. Williams, 24 Ariz. 422, 210 P. 853, 26 A.L.R. 278 (1922); Price v. Tehan, 84 Conn. 164, 79 A. 68 (1911) (imposed unwarranted terms on the release of persons unlawfully arrested).
- ¹⁴ Stalter v. State, 151 Wash. 2d 148, 86 P.3d 1159 (2004).

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False Imprisonment
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I. Civil Actions

C. Liability of Particular Persons

2. Persons Procuring or Participating in Arrest

§ 39. Liability in civil action of persons procuring or participating in false arrest or imprisonment, generally

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 7(4), 15(2)

Persons other than those who actually effect an imprisonment may be held jointly liable with others, as instigators or participants.¹ However, no action for false imprisonment may be maintained for an arrest which is lawful, no matter at whose instigation nor for what motive the arrest was made.²

A defendant who has effected the plaintiff's confinement through process that is valid on its face acts willfully for the purpose of being liable for false arrest only if the process was maliciously or wrongfully obtained, in the sense that the defendant knew that the process was actually void.³ Accordingly, in the case of a lay affiant, the affiant is liable for false arrest when a complaint is made maliciously and without cause.⁴

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Footnotes

¹ [Diaz v. Devlin](#), 229 F. Supp. 3d 101 (D. Mass. 2017) (applying Massachusetts law); [Heinold v. Muntz T. V., Inc.](#), 262 S.W.2d 32 (Mo. 1953).

As to joint and several liability for false imprisonment, generally, see § 37.

² [Gibbs v. Blockbuster, Inc.](#), 318 S.W.3d 157 (Mo. Ct. App. E.D. 2010).

³ [Vahlsing v. Commercial Union Ins. Co., Inc.](#), 928 F.2d 486 (1st Cir. 1991).

⁴ [Daniczek v. Spencer](#), 156 F. Supp. 3d 739 (E.D. Va. 2016).

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I. Civil Actions

C. Liability of Particular Persons

2. Persons Procuring or Participating in Arrest

§ 40. Liability in civil action of private persons instigating false arrest or imprisonment by officer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  7(4), 15(2)

A.L.R. Library

False imprisonment: liability of private citizen, calling on police for assistance after disturbance or trespass, for false arrest by officer, 98 A.L.R.3d 542

False imprisonment: liability of private citizen for false arrest by officer, 21 A.L.R.2d 643

Forms

Forms relating to arrest by private individual, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Forms relating to arrest by law enforcement officer, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A claim of false imprisonment and arrest may be asserted against a private individual,¹ and an unlawful arrest by an officer caused or procured by a private person is the same as an arrest by the private person.² Therefore, where a private person induces an officer by request, direction or command to unlawfully arrest another, the private person is liable for false

imprisonment³ as though the instigator personally made the arrest,⁴ irrespective of whether the officer is liable⁵ or protected from liability.⁶ The plaintiff must show that the private individual took an active role in the arrest,⁷ such as giving advice and encouragement,⁸ importuning⁹ or demanding that law enforcement authorities act,¹⁰ and that the individual intended to confine the plaintiff.¹¹ The private individual must have personally and actively participated in the arrest, directly or by indirect procurement.¹² That conduct must have been intended to cause one to be detained, and in fact caused that result.¹³

A citizen has a clear legal right to report criminal misconduct to authorities, even when the reporting party mistakenly identifies the wrong person.¹⁴ Accordingly, the law encourages citizens to report suspected criminal activity to the authorities,¹⁵ and there is a strong policy in favor of insulating citizen witnesses who act responsibly in assisting law enforcement personnel from liability, where the citizen's actions are reasonably justified by the circumstances.¹⁶ Thus, even if a private citizen makes an honest, good faith mistake in reporting an incident, the mere fact that the citizen's communication to a police officer may have caused the victim's arrest does not make him or her liable for false imprisonment.¹⁷ For that reason, enlisting police aid does not automatically create a conspiracy to unlawfully detain.¹⁸

A false arrest is not instigated if one requested an arrest when it would have been proper and lawful, but the arrest is subsequently made when it has become improper.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

A person responsible for instigating a detention may be held liable for false imprisonment under Alabama law only if he persuades or influences officials to imprison the victim and if he acts in bad faith. [Ala. Code § 6-5-170. Carter v. City of Montgomery, 473 F. Supp. 3d 1273 \(M.D. Ala. 2020\)](#).

A person who causes or directs the arrest of another by an officer without a warrant may be held liable for false imprisonment, in the absence of justification, and the burden of proving that such imprisonment lies within an exception rests upon the person causing the imprisonment. [Ga. Code Ann. § 51-7-60. Carnegay v. Wal-Mart Stores, Inc., 839 S.E.2d 176 \(Ga. Ct. App. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

¹ [Soto v. City of Bonner Springs, 291 Kan. 73, 238 P.3d 278 \(2010\)](#).

² [Mayorov v. United States, 84 F. Supp. 3d 678 \(N.D. Ill. 2015\) \(applying Illinois law\)](#).

³ [Huffman v. Sunshine Recycling, LLC, 417 S.C. 514, 790 S.E.2d 401 \(Ct. App. 2016\)](#).

⁴ [Pixton v. Dunn, 120 Utah 658, 238 P.2d 408 \(1951\)](#).

⁵ [Wood v. Lehne, 30 Cal. App. 2d 222, 85 P.2d 910 \(2d Dist. 1938\)](#).

⁶ [Webb v. Prince, 62 Ga. App. 749, 9 S.E.2d 675 \(1940\); Highfill v. Hale, 186 S.W.3d 277 \(Mo. 2006\)](#).

⁷ [Baez v. JetBlue Airways, 745 F. Supp. 2d 214 \(E.D. N.Y. 2010\) \(applying New York law\)](#).

⁸ [Diaz v. Devlin, 229 F. Supp. 3d 101 \(D. Mass. 2017\) \(applying Massachusetts law\); TADCO Const. Corp. v. Dormitory Authority of State of New York, 700 F. Supp. 2d 253 \(E.D. N.Y. 2010\) \(applying New York law\);](#)

§ 40. Liability in civil action of private persons instigating..., 32 Am. Jur. 2d False...

Oszustowicz v. Admiral Ins. Brokerage Corp., 49 A.D.3d 515, 853 N.Y.S.2d 584 (2d Dep't 2008).

9 TADCO Const. Corp. v. Dormitory Authority of State of New York, 700 F. Supp. 2d 253 (E.D. N.Y. 2010) (applying New York law); Oszustowicz v. Admiral Ins. Brokerage Corp., 49 A.D.3d 515, 853 N.Y.S.2d 584 (2d Dep't 2008).

10 Lowmack v. Eckerd Corp., 303 A.D.2d 998, 757 N.Y.S.2d 406 (4th Dep't 2003).

11 Baez v. JetBlue Airways, 745 F. Supp. 2d 214 (E.D. N.Y. 2010) (applying New York law); Lowmack v. Eckerd Corp., 303 A.D.2d 998, 757 N.Y.S.2d 406 (4th Dep't 2003).

12 Pokorny v. First Federal Sav. & Loan Ass'n of Largo, 382 So. 2d 678 (Fla. 1980); Godines by and through Godines v. First Guar. Sav. & Loan Ass'n, 525 So. 2d 1321 (Miss. 1988).

13 Wal-Mart Stores, Inc. v. Rodriguez, 92 S.W.3d 502 (Tex. 2002).

14 Dangerfield v. Ormsby, 264 S.W.3d 904 (Tex. App. Fort Worth 2008).

15 Keppard v. AFC Enterprises, Inc., 802 So. 2d 959 (La. Ct. App. 4th Cir. 2001).

16 Williams v. Adams, 836 F.2d 958 (5th Cir. 1988).

17 Harder v. Edwards, 174 So. 3d 524 (Fla. 4th DCA 2015).

18 Kay v. New Hampshire Democratic Party, 821 F.2d 31 (1st Cir. 1987).

19 Dolgencorp, Inc. v. Pounders, 912 So. 2d 523 (Ala. Civ. App. 2005).

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I. Civil Actions

- C. Liability of Particular Persons
- 2. Persons Procuring or Participating in Arrest

§ 41. Liability in civil action of private persons instigating false arrest or imprisonment by officer—What constitutes direction or instigation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  7(4), 15(2)

A.L.R. Library

False imprisonment: liability of private citizen, calling on police for assistance after disturbance or trespass, for false arrest by officer, 98 A.L.R.3d 542

False imprisonment: liability of private citizen for false arrest by officer, 21 A.L.R.2d 643

Forms

Forms relating to arrest by private individual, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Forms relating to arrest by law enforcement officer, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

The determination of what constitutes direction or instigation sufficient to impose liability on a private citizen for a wrongful arrest made by an officer depends on the facts of each case.¹ Instigation consists of words or acts that direct, request, invite or encourage the false arrest or imprisonment.² A person may be found to have instigated an arrest, even though there is no

evidence that he or she expressly requested or demanded it, where the facts surrounding an arrest create a permissible inference of instigation.³ For instance, a jury may reasonably infer instigation from evidence that the defendant knowingly provided false, incomplete or misleading information, and an illegal arrest resulted.⁴ However, in the absence of an express request for the detention of another, a private citizen will not be found to have instigated an arrest, where his or her actions were reasonable in light of the facts known or readily available at the time.⁵

It is not necessary, to impose liability, that the defendant expressly direct the arrest,⁶ nor is it necessary that the defendant be present when the arrest is actually made.⁷ However, the individual must take some active part in bringing about the arrest.⁸ Thus, knowing and active encouragement of a false arrest is sufficient to prove the “causation” element of an unlawful confinement.⁹ Liability will not be found where the private citizen neither encouraged nor commanded the police to make the arrest, and there is no suggestion of malice or bad faith on the citizen’s part.¹⁰ The arrest by the officer must be so induced or instigated by the defendant that the act of arrest is made by the officer, not of his or her own volition, but to carry out the defendant’s request.¹¹ A private citizen is not liable for inducing the officer to make the arrest if the officer exercises his or her own authority to arrest.¹² Merely calling the police,¹³ summoning an officer for assistance¹⁴ or to deal with a person accused of a crime¹⁵ is not sufficient participation to impose liability.

No liability is incurred if a person merely gives information to an officer tending to show that a crime has been committed,¹⁶ even if the informer gives inaccurate,¹⁷ incorrect,¹⁸ or incomplete¹⁹ information as a result of a good faith mistake.²⁰ However, a person may be liable for knowingly²¹ or deliberately²² giving false information leading to an arrest, or for deliberately misleading the police.²³

A private citizen is not liable for a false arrest where the person acts solely to assist a peace officer in an investigation of a past offense,²⁴ or does nothing to effect the arrest or imprisonment, except to identify a suspect,²⁵ even where the identification may have been the principal cause of the wrongful arrest,²⁶ unless the misidentification is willful.²⁷ Similarly, the mere identification of goods suspected to have been stolen, at least if made in good faith and on probable cause, will not render a person liable for a resulting arrest without a warrant by an officer.²⁸ However, there is also authority that if a reasonable person would have investigated to determine if probable cause existed, prior to urging an arrest, the failure to do so may imply malice.²⁹

CUMULATIVE SUPPLEMENT

Cases:

Georgia law draws a fine line of demarcation between cases where a party directly or indirectly urges a law enforcement official to begin criminal proceedings and cases where a party merely relays facts to an official who then makes an independent decision to arrest or prosecute; in the former case there is potential liability, but in the latter case there is not. [Ga. Code Ann. §§ 51-7-20, 51-7-21, 51-7-22. McClendon v. Harper, 349 Ga. App. 581, 826 S.E.2d 412 \(2019\).](#)

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Footnotes

¹ [Gibbs v. Blockbuster, Inc., 318 S.W.3d 157 \(Mo. Ct. App. E.D. 2010\).](#)

² [Amobi v. District of Columbia Dept. of Corrections, 755 F.3d 980 \(D.C. Cir. 2014\) \(applying District of Columbia law\); Carr v. City of Hillsboro, 497 F. Supp. 2d 1197, 223 Ed. Law Rep. 670 \(D. Or. 2007\) \(applying Oregon law\).](#)

³ [Deadman v. Valley Nat. Bank of Arizona, 154 Ariz. 452, 743 P.2d 961 \(Ct. App. Div. 1 1987\); Knupp v. Esslinger, 363 S.W.2d 210 \(Mo. Ct. App. 1962\) \(circumstantial evidence\).](#)

- 4 Gibbs v. Blockbuster, Inc., 318 S.W.3d 157 (Mo. Ct. App. E.D. 2010).
- 5 Deadman v. Valley Nat. Bank of Arizona, 154 Ariz. 452, 743 P.2d 961 (Ct. App. Div. 1 1987).
- 6 Examination Management Services, Inc. v. Steed, 340 Ga. App. 51, 794 S.E.2d 678 (2016); Knupp v. Esslinger, 363 S.W.2d 210 (Mo. Ct. App. 1962).
- 7 Wood v. Lehne, 30 Cal. App. 2d 222, 85 P.2d 910 (2d Dist. 1938); (Blue) Star Service, Inc. v. McCurdy, 36 Tenn. App. 1, 251 S.W.2d 139 (1952).
- 8 Cook v. City of New York, 2017 WL 1434493 (E.D. N.Y. 2017) (applying New York law); Williams v. CVS Pharmacy, Inc., 126 A.D.3d 890, 6 N.Y.S.3d 78 (2d Dep’t 2015).
- 9 Singh v. McLaughlin, 255 Or. App. 340, 297 P.3d 514 (2013).
- 10 Dixie Beer Co. v. Boyett, 158 Ga. App. 622, 281 S.E.2d 356 (1981).
- 11 Diaz v. Devlin, 229 F. Supp. 3d 101 (D. Mass. 2017) (applying Massachusetts law); Dangerfield v. Ormsby, 264 S.W.3d 904 (Tex. App. Fort Worth 2008).
- 12 Vessels v. District of Columbia, 531 A.2d 1016 (D.C. 1987); Arrowsmith v. Williams, 174 Ga. App. 690, 331 S.E.2d 30 (1985).
- 13 Doe v. Safeway, Inc., 88 A.3d 131 (D.C. 2014).
- 14 Carrillos v. Incorporated Village of Hempstead, 87 F. Supp. 3d 357 (E.D. N.Y. 2015) (applying New York law); Boadu v. City of New York, 95 A.D.3d 918, 944 N.Y.S.2d 265 (2d Dep’t 2012).
- 15 Hoock v. S. S. Kresge Co., 230 S.W.2d 758 (Mo. 1950); Belcher v. Wal-Mart Stores, Inc., 211 W. Va. 712, 568 S.E.2d 19 (2002).
- 16 Singer v. Colony Insurance Company, 147 F. Supp. 3d 1369 (S.D. Fla. 2015) (applying Florida law); El-Ghazzawy v. Berthiaume, 708 F. Supp. 2d 874 (D. Minn. 2010), aff’d, 636 F.3d 452 (8th Cir. 2011) (applying Minnesota law); Davis v. Prosperity Bank, 383 S.W.3d 795 (Tex. App. Houston 14th Dist. 2012).
- 17 Gibbs v. Blockbuster, Inc., 318 S.W.3d 157 (Mo. Ct. App. E.D. 2010); Davis v. Prosperity Bank, 383 S.W.3d 795 (Tex. App. Houston 14th Dist. 2012).
- 18 Gibbs v. Blockbuster, Inc., 318 S.W.3d 157 (Mo. Ct. App. E.D. 2010).
- 19 Davis v. Prosperity Bank, 383 S.W.3d 795 (Tex. App. Houston 14th Dist. 2012).
- 20 Amobi v. District of Columbia Dept. of Corrections, 755 F.3d 980 (D.C. Cir. 2014); Harder v. Edwards, 174 So. 3d 524 (Fla. 4th DCA 2015).
- 21 Amobi v. District of Columbia Dept. of Corrections, 755 F.3d 980 (D.C. Cir. 2014); Matthaus v. Hadjedj, 148 A.D.3d 425, 49 N.Y.S.3d 393 (1st Dep’t 2017); Davis v. Prosperity Bank, 383 S.W.3d 795 (Tex. App. Houston 14th Dist. 2012).
- 22 Fletcher v. High’s Dairy Products Division of Capital Milk Producers Co-Operative, Inc., 22 Md. App. 71, 321 A.2d 821 (1974).
- 23 Johnson v. Follett Higher Educ. Group, Inc., 113 A.D.3d 819, 979 N.Y.S.2d 393 (2d Dep’t 2014).
- 24 Hughes v. Oreb, 36 Cal. 2d 854, 228 P.2d 550 (1951); Edgar v. Omaha Public Power Dist., 166 Neb. 452, 89 N.W.2d 238 (1958).
- 25 Amobi v. District of Columbia Dept. of Corrections, 755 F.3d 980 (D.C. Cir. 2014); Anilao v. Spota, 774 F. Supp. 2d 457 (E.D. N.Y. 2011); Davis v. Prosperity Bank, 383 S.W.3d 795 (Tex. App. Houston 14th Dist. 2012).

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²⁶ [Smith v. District of Columbia](#), 399 A.2d 213 (D.C. 1979); [Edgar v. Omaha Public Power Dist.](#), 166 Neb. 452, 89 N.W.2d 238 (1958).

²⁷ [Wal-Mart Stores, Inc. v. Rodriguez](#), 92 S.W.3d 502 (Tex. 2002).

²⁸ [Klemm v. Adair](#), 189 Iowa 896, 179 N.W. 51 (1920); [State ex rel. Fireman's Fund Ins. Co. v. Trimble](#), 294 Mo. 615, 242 S.W. 934 (1922).

²⁹ [Corporate Property Investors v. Milon](#), 249 Ga. App. 699, 549 S.E.2d 157 (2001).

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2. Persons Procuring or Participating in Arrest

§ 42. Liability in civil action for false arrest or imprisonment of private persons assisting officer on request

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  15(1)

A.L.R. Library

Liability, for false imprisonment or arrest, of a private person answering call of known or asserted peace or police officer to assist in making arrest which turns out to be unlawful, 29 A.L.R.2d 825

Forms

Forms relating to arrest by private individual, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Forms relating to arrest by law enforcement officer, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

All who knowingly assist in false imprisonment are liable as joint tortfeasors for the damage done,¹ and may be joined as defendants without an allegation or proof of a conspiracy.² On the other hand, a person who, in good faith, renders assistance and obeys the directions of a known public officer is not liable for false arrest or imprisonment, even though the officer may be acting unlawfully, and may thus be personally liable.³ Even so, a citizen who acts wantonly or beyond what is required is liable.⁴

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Footnotes

- ¹ Garcia v. City of Merced, 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law); Diamond 67, LLC v. Oatis, 167 Conn. App. 659, 144 A.3d 1055 (2016), certification denied, 323 Conn. 927, 150 A.3d 229 (2016) and certification denied, 323 Conn. 927, 150 A.3d 228 (2016) and certification denied, 323 Conn. 927, 150 A.3d 228 (2016) and certification denied, 323 Conn. 926, 150 A.3d 230 (2016) and certification denied, 323 Conn. 927, 150 A.3d 230 (2016).
- ² Garcia v. City of Merced, 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law).
- ³ Peterson v. Robison, 43 Cal. 2d 690, 277 P.2d 19 (1954); Moyer v. Meier, 1951 OK 347, 205 Okla. 405, 238 P.2d 338, 29 A.L.R.2d 818 (1951).
- ⁴ Moyer v. Meier, 1951 OK 347, 205 Okla. 405, 238 P.2d 338, 29 A.L.R.2d 818 (1951).

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2. Persons Procuring or Participating in Arrest

§ 43. Liability in civil action of complainants for false arrest or imprisonment

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 15(1)

A lay complainant is not liable merely for making a criminal complaint¹ or an honest statement of the facts to a magistrate,² leaving it to the authorities to take appropriate action. If the facts supporting an arrest are placed before an independent intermediary, such as a magistrate or grand jury, the intermediary's decision breaks the chain of causation for false arrest, insulating the complainant.³ Thus, a complainant is not liable for false imprisonment, even though the complaint is insufficient to charge the commission of a crime.⁴

Swearing out a criminal warrant that was procedurally valid when requested does not result in liability for false imprisonment if the prosecution terminated only because the sheriff did not timely execute it.⁵

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Footnotes

¹ [Gooch v. Wachowiak](#), 352 Mich. 347, 89 N.W.2d 496 (1958); [J. C. Penney Co. v. Reynolds](#), 329 S.W.2d 104 (Tex. Civ. App. El Paso 1959), writ refused n.r.e., (Apr. 13, 1960).

² [Gogue v. MacDonald](#), 35 Cal. 2d 482, 218 P.2d 542, 21 A.L.R.2d 639 (1950); [Rush v. Buckley](#), 100 Me. 322, 61 A. 774 (1905); [J. C. Penney Co. v. Reynolds](#), 329 S.W.2d 104 (Tex. Civ. App. El Paso 1959), writ refused n.r.e., (Apr. 13, 1960).

³ [Taylor v. Gregg](#), 36 F.3d 453 (5th Cir. 1994).

⁴ [Gogue v. MacDonald](#), 35 Cal. 2d 482, 218 P.2d 542, 21 A.L.R.2d 639 (1950); [Harbison v. Chicago, R. I. & P. Ry. Co.](#), 327 Mo. 440, 37 S.W.2d 609, 79 A.L.R. 1 (1931).

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[Erfani v. Bishop, 251 Ga. App. 20, 553 S.E.2d 326 \(2001\).](#)

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§ 44. Liability in civil action for false imprisonment or arrest of persons initiating commitment proceedings

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  15(1), 15(2)

A.L.R. Library

[Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings](#), 30 A.L.R.3d 523

Liability may exist in suits against persons other than examining physicians who filed an insanity complaint or in some other manner directly initiated insanity proceedings against the plaintiff.¹ However, treatment staff and others not directly involved in the original arrest or detention itself are not liable on a false imprisonment claim because of the detainee's need for protection or treatment, or the efficacy of consent or substituted consent.² Defendants who initiated insanity proceedings have also been found not liable on the basis that a false imprisonment suit may not be based on a commitment authorized by apparently valid process.³

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Footnotes

¹ [Burton v. Llano Del Rio Co. of Nevada](#), 177 La. 366, 148 So. 259 (1933); [Boesch v. Kick](#), 98 N.J.L. 183, 119 A. 1, 25 A.L.R. 1516 (N.J. Ct. Err. & App. 1922).

² [Day v. Providence Hosp.](#), 622 So. 2d 1273 (Ala. 1993); [Radcliff v. County of Harrison](#), 627 N.E.2d 1305 (Ind. 1994).

³ [Rosvall v. Provost](#), 279 Minn. 119, 155 N.W.2d 900 (1968); [Fowle v. Fowle](#), 263 N.C. 724, 140 S.E.2d 398 (1965). As to the effect of a proper commitment, see § 33.

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2. Persons Procuring or Participating in Arrest

§ 45. Liability in civil action of persons participating in false arrest or confinement of mentally ill person

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  15(1)

False imprisonment claims may not be maintained against those who participate in the actual arrest or confinement of an allegedly mentally ill person, where one's actions in taking the detainee into custody and transporting him or her to a mental hospital on an emergency basis are supported by probable cause,¹ or there was a valid commitment order.² However, liability may be based on inducing the plaintiff to go to an asylum by means of a false statement, and then causing that person to be confined.³

The immunity provided by a mental health statute to any person who acts in good faith to assist in the apprehension and examination of a patient precludes civil liability for false imprisonment, if the person acted in good faith and without malice pursuant to legal process,⁴ or absent bad faith or gross negligence.⁵ A sheriff implementing an emergency order for the detention of a mentally ill and dangerous person is entitled to immunity under the good faith provisions of a statute, if the sheriff made reasonable provision for the detainee's care and protection.⁶

Liability will not be extended to persons who have no part in the allegedly unlawful commitment.⁷

CUMULATIVE SUPPLEMENT

Cases:

Immunity provision of the Mental Health Procedures Act (MHPA) protects from civil and criminal liability those individuals and institutions that provide treatment to mentally ill patients, and thus promotes the statutory goal of ensuring such treatment remains available. [50 Pa. Stat. Ann. § 7114\(a\). Dean v. Bowling Green-Brandywine, 225 A.3d 859 \(Pa. 2020\).](#)

[END OF SUPPLEMENT]

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Footnotes

¹ [McKinney v. George, 726 F.2d 1183 \(7th Cir. 1984\)](#).

² [Savage v. Boies, 77 Ariz. 355, 272 P.2d 349 \(1954\)](#); [Rosvall v. Provost, 279 Minn. 119, 155 N.W.2d 900 \(1968\)](#). As to the effect of a proper commitment, see § 33.

³ [Boesch v. Kick, 98 N.J.L. 183, 119 A. 1, 25 A.L.R. 1516 \(N.J. Ct. Err. & App. 1922\)](#).

⁴ [Humphrey v. Feazel, 367 So. 2d 897 \(La. Ct. App. 2d Cir. 1979\)](#), writ denied, [369 So. 2d 1365 \(La. 1979\)](#); [Patrick v. Menorah Medical Center, 636 S.W.2d 134 \(Mo. Ct. App. W.D. 1982\)](#).

⁵ [Doe HM v. City of Creve Coeur, Mo., 666 F. Supp. 2d 988 \(E.D. Mo. 2009\)](#) (applying Missouri law).

⁶ [Radcliff v. County of Harrison, 627 N.E.2d 1305 \(Ind. 1994\)](#) (pending finding an available hospital bed).

⁷ [Radcliff v. County of Harrison, 627 N.E.2d 1305 \(Ind. 1994\)](#); [Temple v. Marlborough Div. of Dist. Court Dept., 395 Mass. 117, 479 N.E.2d 137 \(1985\)](#).

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- C. Liability of Particular Persons
- 2. Persons Procuring or Participating in Arrest

§ 46. Liability for false arrest or imprisonment of parties or attorneys in civil litigation

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 15(2)

A.L.R. Library

[False imprisonment: liability of private citizen for false arrest by officer](#), 21 A.L.R.2d 643

Forms

Forms relating to civil litigant, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

An attorney is liable for procuring a body attachment or similar warrant for an arrest in a civil case only if the attorney actively misled or defrauded the court that issued the process.¹ A civil litigant's liability may be based upon participation in the improper arrest,² or subsequent adoption or ratification of the arrest.³ While imprisonment for contempt results in liability for false imprisonment where that remedy is not authorized by law for the particular purpose,⁴ one who institutes contempt proceedings is not liable for the judge's error in ordering a party committed for contempt, if that party was properly before the court and a regular hearing was held.⁵

Footnotes

¹ [Stern v. Thompson & Coates, Ltd.](#), 185 Wis. 2d 220, 517 N.W.2d 658 (1994). As to the liability and immunity of attorneys, generally, see §§ 103 to 105.

² [Haglund v. Burdick State Bank](#), 100 Kan. 279, 164 P. 167 (1917).

³ [Stuart v. Chapman](#), 104 Me. 17, 70 A. 1069 (1908).

⁴ [Houghton v. Foremost Financial Services Corp.](#), 724 F.2d 112 (10th Cir. 1983) (attempt to collect on a void judgment could invoke liability for false imprisonment); [Yahola v. Whipple](#), 1941 OK 330, 189 Okla. 583, 118 P.2d 395 (1941).

⁵ [Langen v. Borkowski](#), 188 Wis. 277, 206 N.W. 181, 43 A.L.R. 622 (1925).

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§ 47. Vicarious liability of principal for false arrest or imprisonment, generally

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[Principal's liability for false arrest or imprisonment caused by agent or servant, 92 A.L.R.2d 15](#)

Forms

Forms relating to employee, corporations, or agents, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A plaintiff may state a false imprisonment claim against an employer based on the actions of an employee under a respondeat superior theory of liability.¹ Liability is generally based on the employee or agent acting within the course and scope of employment.² Thus, a municipality is answerable and may be held liable for the conduct of its officers who commit common law torts, such as false imprisonment, when they are acting in the course of their employment.³ Clearly, the employer or principal may be held liable where the subordinate had express authority to make or cause the detention.⁴ However, it is not necessary that authority be expressly conferred or specifically authorized, if it can be implied from the nature of the relationship and the mode in which the subordinate was permitted to act or conduct the principal's business,⁵ even if the employee acted contrary to instructions⁶ or due to anger or the like, went beyond the strict line of duty.⁷ A principal may also be held liable for false imprisonment under the doctrine of agency by estoppel.⁸

An employer will not be held liable for false imprisonment for the actions of an employee that are outside the scope of employment and not within the employer's policies or practices,⁹ or that are not within the scope of express or implied authority,¹⁰ in the absence of ratification.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Metropolitan Atlanta Rapid Transit Authority (MARTA) detective was immune from false-imprisonment claim raised by employee after employee was arrested for supposedly taking a van, and therefore, MARTA could not be held vicariously liable for the claim; although detective's decision to arrest employee was, at best, misguided, there was no evidence suggesting detective intended to do wrong or intended to injure the employee. [Ga. Code Ann. § 51-7-20. McClendon v. Harper, 349 Ga. App. 581, 826 S.E.2d 412 \(2019\)](#).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Dennis v. Pace Suburban Bus Service, 2014 IL App \(1st\) 132397, 385 Ill. Dec. 527, 19 N.E.3d 85 \(App. Ct. 1st Dist. 2014\).](#)
- ² [Yabba v. Alabama Christian Academy, 823 F. Supp. 2d 1247, 278 Ed. Law Rep. 982 \(M.D. Ala. 2011\) \(applying Alabama law\); \[Coffee v. Peterbilt of Nashville, Inc., 795 S.W.2d 656 \\(Tenn. 1990\\)\]\(#\).](#)
- ³ [Williams v. City of New York, 121 F. Supp. 3d 354 \(S.D. N.Y. 2015\) \(applying New York law\).](#)
- ⁴ [Thomas v. F. & R. Lazarus & Co., 3 Ohio Op. 2d 75, 57 N.E.2d 116 \(Ct. App. 2d Dist. Franklin County 1941\); \[Wheatley v. Washington Jockey Club, 39 Wash. 2d 163, 234 P.2d 878 \\(1951\\)\]\(#\).](#)
- ⁵ [Combs v. Kobacker Stores, Inc., 65 Ohio L. Abs. 326, 114 N.E.2d 447 \(Ct. App. 2d Dist. Franklin County 1953\); \[Leon's Shoe Stores, Inc. v. Hornsby, 306 S.W.2d 402 \\(Tex. Civ. App. Waco 1957\\)\]\(#\).](#)
- ⁶ [Hammargren v. Montgomery Ward & Co., 172 Kan. 484, 241 P.2d 1192 \(1952\); \[McDermott v. W.T. Grant Co., 313 Mass. 736, 49 N.E.2d 115 \\(1943\\)\]\(#\).](#)
- ⁷ [J. J. Newberry Co. v. Judd, 259 Ky. 309, 82 S.W.2d 359 \(1935\).](#)
- ⁸ [Combs v. Kobacker Stores, Inc., 65 Ohio L. Abs. 326, 114 N.E.2d 447 \(Ct. App. 2d Dist. Franklin County 1953\).](#)
- ⁹ [Big B, Inc. v. Cottingham, 634 So. 2d 999 \(Ala. 1993\).](#)
- ¹⁰ [Heinold v. Muntz T. V., Inc., 262 S.W.2d 32 \(Mo. 1953\); \[Taylor v. Erie R. Co., 268 N.Y. 711, 198 N.E. 570 \\(1935\\)\]\(#\).](#)
- ¹¹ [§ 49.](#)

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§ 48. Protecting employer's interests or vindicating justice in vicarious liability cases of false arrest or imprisonment

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  15(3)

A.L.R. Library

[Principal's liability for false arrest or imprisonment caused by agent or servant, 92 A.L.R.2d 15](#)

There is a distinction between a false arrest caused by an agent for the purpose of protecting the rights or interests of the principal, such as protecting the principal's property from theft, and an arrest or imprisonment caused for the purpose of punishing an offender for an act already done.¹ The principal may be exonerated where the act was not for the protection of the principal's property or interest, but was to vindicate public justice, even though the arrest had its origin in some agency relationship.² On the other hand, the employer is liable if the employee's objective was to recover the employer's property, however erroneous, mistaken, or malicious the act may be.³ Similarly, actions taken by a theater's security officer, who was an off-duty deputy sheriff, in arresting a patron for loitering, were not clearly police in nature, resulting in the theatre being liable, where the officer referred to the theater's no loitering policy, and then asked the patron to show a ticket stub.⁴

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Footnotes

¹ [Southern Ry. Co. v. Beaty](#), 212 Ala. 608, 103 So. 658 (1925).

² [Arkansas Central Power Co. v. Hildreth](#), 174 Ark. 529, 296 S.W. 33 (1927); [Louisville & N. R. Co. v. Vinson](#), 310

Ky. 854, 223 S.W.2d 89 (1949).

³ McDermott v. W.T. Grant Co., 313 Mass. 736, 49 N.E.2d 115 (1943); Combs v. Kobacker Stores, Inc., 65 Ohio L. Abs. 326, 114 N.E.2d 447 (Ct. App. 2d Dist. Franklin County 1953).

⁴ American Multi-Cinema, Inc. v. Walker, 270 Ga. App. 314, 605 S.E.2d 850 (2004).

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§ 49. Vicarious liability of principal for false arrest or imprisonment through ratification

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A.L.R. Library

[Principal's liability for false arrest or imprisonment caused by agent or servant, 92 A.L.R.2d 15](#)

A principal may become liable for a false arrest or imprisonment by its agent through ratification.¹ Ratification may be by acts of omission as well as commission.² Retaining an employee after notice of a wrongful act is some evidence of ratification,³ but the principal's information should be complete to justify the conclusion of ratification on this ground.⁴ There is some indication that mere passive approval of, acquiescence in, knowledge of, or silence with regard to an employee's act in making a wrongful arrest will not amount to ratification,⁵ although under the circumstances of some cases, it has been held that an employer may be found to have ratified the act by that type of conduct,⁶ including not investigating the circumstances under which the arrest was made.⁷

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Footnotes

¹ [Allen v. Ritter](#), 235 So. 2d 253 (Miss. 1970) (jury question); [Rogers v. Sears, Roebuck & Co.](#), 48 Wash. 2d 879, 297 P.2d 250 (1956).

² [Ex parte Central Iron & Coal Co.](#), 212 Ala. 130, 101 So. 824 (1924) (ratification by corporation's attorney assisting the prosecution, after an arrest caused by a watchman); [Rogers v. Sears, Roebuck & Co.](#), 48 Wash. 2d 879, 297 P.2d

250 (1956).

³ Great Atlantic & Pacific Tea Co. v. Lethcoe, 279 F.2d 948 (4th Cir. 1960); Safeway Stores v. Gibson, 118 A.2d 386 (Mun. Ct. App. D.C. 1955), judgment aff'd, 237 F.2d 592 (D.C. Cir. 1956).

⁴ Cobb v. Simon, 119 Wis. 597, 97 N.W. 276 (1903).

⁵ Henriques v. Franklin Motor Car Co., 260 Mass. 518, 157 N.E. 580 (1927).

⁶ Topolewski v. Plankinton Packing Co., 143 Wis. 52, 126 N.W. 554 (1910).

⁷ Southern Ry. Co. v. Beaty, 212 Ala. 608, 103 So. 658 (1925); Alamo Downs, Inc. v. Briggs, 106 S.W.2d 733 (Tex. Civ. App. San Antonio 1937), writ dismissed.

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§ 50. Effect of exoneration of subordinate on vicarious liability of principal for false arrest or imprisonment

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[Principal's liability for false arrest or imprisonment caused by agent or servant, 92 A.L.R.2d 15](#)

An employer may avoid liability for false imprisonment by showing that the employee cannot be held liable or has been released.¹ Thus, in accordance with the rules governing liability for instigating an arrest,² an employer is not liable for a detention by the police if an employee acted in good faith when contacting them,³ did not act recklessly,⁴ had probable cause,⁵ or where the employees were not involved in making the arrest.⁶

There are a number of exceptions to the rule that the employer is exonerated, such as where liability is based on the acts of other employees, there are separate grounds upon which to find the employer liable, the employer subsequently ratified the act, or the act was performed under the employer's direction and supervision.⁷

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Footnotes

¹ [Harrer v. Montgomery Ward & Co.](#), 124 Mont. 295, 221 P.2d 428 (1950); [Kraft v. Montgomery Ward & Co.](#), 220 Or. 230, 348 P.2d 239, 92 A.L.R.2d 1 (1959).

2 §§ 40, 41.

3 [Yabba v. Alabama Christian Academy](#), 823 F. Supp. 2d 1247, 278 Ed. Law Rep. 982 (M.D. Ala. 2011) (applying
Alabama law); [Crutcher v. Wendy's of North Alabama, Inc.](#), 857 So. 2d 82 (Ala. 2003).

4 [Doe v. Safeway, Inc.](#), 88 A.3d 131 (D.C. 2014).

5 [Blanchard v. Circus Casinos, Inc.](#), 124 Nev. 1453, 238 P.3d 796 (2008).

6 [Pellegrini v. Duane Reade Inc.](#), 137 A.D.3d 651, 27 N.Y.S.3d 564 (1st Dep't 2016).

7 [Kraft v. Montgomery Ward & Co.](#), 220 Or. 230, 348 P.2d 239, 92 A.L.R.2d 1 (1959).

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C. Liability of Particular Persons

3. Vicarious Liability

§ 51. Vicarious liability of private corporation for false arrest or imprisonment

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West's Key Number Digest

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Principal's liability for false arrest or imprisonment caused by agent or servant, [92 A.L.R.2d 15](#)

Forms

Forms relating to liability of corporation, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A corporation may be held liable for the false imprisonment or false arrest of a third person caused by the act of its officer, agent, or employee while acting within the scope of authority or the course of employment.¹ As usual, it is required that the officer, agent, or employee be authorized with respect to the arrest, or the act was ratified or within the scope of the officer's, agent's, or employee's general line of duty.²

Exoneration of the employee who caused an assertedly false imprisonment³ exonerates the corporate employer.⁴

Footnotes

¹ Director General of Railroads v. Kastenbaum, 263 U.S. 25, 44 S. Ct. 52, 68 L. Ed. 146 (1923); American Multi-Cinema, Inc. v. Walker, 270 Ga. App. 314, 605 S.E.2d 850 (2004).

² Lamm v. Charles Stores Co., 201 N.C. 134, 159 S.E. 444, 77 A.L.R. 923 (1931); Kraft v. Montgomery Ward & Co., 220 Or. 230, 348 P.2d 239, 92 A.L.R.2d 1 (1959).

³ § 50.

⁴ Wade v. Campbell, 211 Mo. App. 274, 243 S.W. 248 (1922).

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Research References

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West's A.L.R. Digest, [False Imprisonment](#) 7(2), 10 to 15(2)

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1. In General

§ 52. Defenses against civil liability for false arrest or imprisonment, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  10

To avoid liability in an action for false imprisonment, the defendant must either show that he or she did not imprison the plaintiff or must justify the imprisonment.¹ According to some courts, the presence of probable cause for imprisonment may not be a defense² unless it constitutes justification³ or legal excuse,⁴ reasonable grounds for acting in defense of property⁵ or in making an arrest without a warrant.⁶ According to other courts, however, it is an affirmative defense,⁷ and is a bar to recovery.⁸ Moreover, proof of the existence of a privilege⁹ or immunity¹⁰ is also a defense.

Statements made by a private individual to a police officer may be subject to an absolute privilege for statements made in official proceedings, thereby barring a false imprisonment claim.¹¹

An offer to release a plaintiff temporarily has no effect upon an action for false imprisonment if the offer does not constitute an abrogation of the arrest.¹²

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Footnotes

¹ [Kraft v. Montgomery Ward & Co.](#), 220 Or. 230, 348 P.2d 239, 92 A.L.R.2d 1 (1959).

² [Nesmith v. Alford](#), 318 F.2d 110 (5th Cir. 1963); [Hill v. Henry](#), 90 Ga. App. 93, 82 S.E.2d 35 (1954).

³ [Diaz v. Devlin](#), 229 F. Supp. 3d 101 (D. Mass. 2017) (applying Massachusetts law).
As to justification for false imprisonment or arrest, generally, see §§ 60 to 63.

⁴ [Jackson v. Brickey](#), 771 F. Supp. 2d 593 (W.D. Va. 2011) (applying Virginia law).

5 §§ 64, 69.

6 § 74.

7 *Chen v. District of Columbia*, 256 F.R.D. 267 (D.D.C. 2009) (applying District of Columbia law); *Scales v. District of Columbia*, 973 A.2d 722 (D.C. 2009).

8 *Cox v. Roach*, 218 N.C. App. 311, 723 S.E.2d 340 (2012).

9 *Soto-Cintron v. United States*, 227 F. Supp. 3d 178 (D.P.R. 2017); *Brown v. Fournier*, 2017 WL 2391709 (Ky. Ct. App. 2017).

10 *Brown v. Fournier*, 2017 WL 2391709 (Ky. Ct. App. 2017).

11 *Mulder v. Pilot Air Freight*, 32 Cal. 4th 384, 7 Cal. Rptr. 3d 828, 81 P.3d 264 (2004).

12 *Johnson v. Norfolk & W. Ry. Co.*, 82 W. Va. 692, 97 S.E. 189, 6 A.L.R. 1469 (1918).

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1. In General

§ 53. Consent as defense against civil liability for false arrest or imprisonment

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 10

Forms

Forms relating to consent, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

The plaintiff's consent to acts that constitute an imprisonment may bar an action for false imprisonment.¹ According to some courts, consent is not, strictly speaking, a privilege or even a defense but negates the existence of a tort.² According to others, however, consent is an affirmative defense which must be pleaded and proved by the defendant.³ A restraint is without consent if it is accomplished by physical force, intimidation, or deception.⁴

Consent will not bar the action if it is not unequivocally manifested.⁵ Moreover the consent must be free from compulsion⁶ or mistake.⁷ Consent may, however, be implied.⁸ The existence and voluntariness of the consent may raise a jury issue.⁹

A minor over the age of 14 may presumptively be capable of consenting to the defendants' conduct in concealing the minor from the child's parents, even if that would be a civil wrong against the parents.¹⁰

A voluntary consent to admission or treatment at a hospital may be a valid consent, so as to negate tort liability,¹¹ as may a valid substituted consent given by a parent on behalf of a child.¹² Consent may also be implied from the circumstances of the case.¹³

Footnotes

- ¹ [Zainc v. City of Waterbury](#), 603 F. Supp. 2d 368 (D. Conn. 2009) (applying Connecticut law); [Carter v. Aramark Sports and Entertainment Services, Inc.](#), 153 Md. App. 210, 835 A.2d 262 (2003) (consent to remain in office for questioning about the theft).
- ² [George v. International Soc. for Krishna Consciousness of California](#), 4 Cal. Rptr. 2d 473 (App. 4th Dist. 1992), reh'g denied and opinion modified, (Mar. 2, 1992).
As to lack of consent being part of the definition of the tort, see § 1.
As to the effect of voluntary submission to restraint, see § 18.
- ³ [Festa v. Jordan](#), 803 F. Supp. 2d 319 (M.D. Pa. 2011) (applying Pennsylvania law).
- ⁴ [State v. Lansdowne](#), 111 Wash. App. 882, 46 P.3d 836 (Div. 3 2002).
- ⁵ [Drake v. Keeling](#), 226 Iowa 1, 287 N.W. 596 (1939) (consent to extradition not a waiver of the right to object to the unlawfulness of the arrest); [Cook v. Highland Hospital](#), 168 N.C. 250, 84 S.E. 352 (1915) (agreement to be subject to a hospital's rules not consent to the detention).
- ⁶ [Meints v. Huntington](#), 276 F. 245, 19 A.L.R. 664 (C.C.A. 8th Cir. 1921).
- ⁷ [Whitman v. Atchison, T. & S.F. Ry. Co.](#), 85 Kan. 150, 116 P. 234 (1911) (passenger's consent to remain and make a statement upon being told by a conductor that it was required by law).
- ⁸ [Zavala v. Wal Mart Stores Inc.](#), 691 F.3d 527 (3d Cir. 2012) (applying New Jersey law); [Simon v. Grady Health System](#), 297 Ga. App. 117, 676 S.E.2d 386 (2009).
- ⁹ [Collins v. Straight, Inc.](#), 748 F.2d 916, 17 Fed. R. Evid. Serv. 1351 (4th Cir. 1984).
- ¹⁰ [George v. International Soc. for Krishna Consciousness of California](#), 4 Cal. Rptr. 2d 473 (App. 4th Dist. 1992), reh'g denied and opinion modified, (Mar. 2, 1992).
- ¹¹ [Hester v. Brown](#), 512 F. Supp. 2d 1228 (M.D. Ala. 2007) (applying Alabama law); [Hughes v. Pullman](#), 2001 MT 216, 306 Mont. 420, 36 P.3d 339 (2001).
- ¹² [R.J.D. v. Vaughan Clinic, P.C.](#), 572 So. 2d 1225 (Ala. 1990).
- ¹³ [Blackman for Blackman v. Rifkin](#), 759 P.2d 54 (Colo. App. 1988) (plaintiff's extreme intoxication and head trauma warranted retention in an emergency room, and the hospital staff's privilege to restrain the plaintiff from leaving was commensurate with consent implied for necessary treatment).

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§ 54. Plaintiff's negligence as defense against liability for false arrest or imprisonment

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  10

While it generally appears that the plaintiff's negligence resulting in further injury is not a defense in an action of false imprisonment, where the defendant's wrong has the element of willful, reckless, and wanton misconduct,¹ there is authority that the plaintiff's negligence may bar recovery for physical injuries incurred while trying to escape.² Comparative fault principles were applied where a court determined that claimant in a false arrest case should have been more cooperative with the police officer and had engaged in some provocation.³

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Footnotes

¹ [Cieplinski v. Severn](#), 269 Mass. 261, 168 N.E. 722 (1929).

² [Sindle v. New York City Transit Authority](#), 33 N.Y.2d 293, 352 N.Y.S.2d 183, 307 N.E.2d 245 (1973) (bus rider placed himself in a perilous position in the window of the bus preparatory to an attempt to alight).

³ [Nelson v. City of Shreveport](#), 921 So. 2d 1111 (La. Ct. App. 2d Cir. 2006), writ denied, [927 So. 2d 317](#) (La. 2006) and writ denied, [927 So. 2d 313](#) (La. 2006) (10% fault assessed against plaintiff).

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§ 55. Release as defense against liability for false arrest or imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  10

There is disagreement whether a release executed in consideration of an agreement to not prosecute a detained suspect is contrary to public policy and thus would not bar a civil claim of false arrest or imprisonment.¹ One who is arrested on a charge which is not an offense and was released under a promise not to prosecute is not barred from suing because that promise is without consideration and may be found to have been exacted by the exigencies of the situation.²

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Footnotes

¹ [Food Fair Stores, Inc. v. Joy](#), 283 Md. 205, 389 A.2d 874 (1978) (release not void as a matter of public policy nor the product of duress); [Kroger Co. v. Demakes](#), 566 S.W.2d 653 (Tex. Civ. App. Houston 1st Dist. 1978), writ refused n.r.e., (Sept. 20, 1978) (release unenforceable).

² [Rice v. Harrington](#), 38 R.I. 47, 94 A. 736 (1915).

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§ 56. Waiver as defense against civil liability for false arrest or imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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[Delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment](#), 98 A.L.R.2d 966

Trial Strategy

[False Imprisonment—Failure to Take Arrestee Before Magistrate Without Unreasonable or Unnecessary Delay](#), 26 Am. Jur. Proof of Facts 2d 617

The conduct of the arrested person may amount to a waiver of the right to complain about a failure to take one promptly before a magistrate or court.¹ The right to complain about a failure to take an arrested person before a magistrate within a reasonable time may be waived where the prisoner was discharged at his or her own request or with his or her consent.² Also, the arrested person has sometimes been deemed to have waived the failure to be taken before a magistrate within a reasonable time by agreeing to await the police officer's investigation³ or the outcome of a polygraph test.⁴

There is disagreement whether the giving of a bail bond constitutes a waiver of a false imprisonment claim.⁵

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Footnotes

- ¹ [Haggard v. First Nat. Bank of Mandan](#), 72 N.D. 434, 8 N.W.2d 5 (1942); [Brown v. Meier & Frank Co.](#), 160 Or. 608, 86 P.2d 79 (1939).
- ² [Doherty v. Shea](#), 320 Mass. 173, 68 N.E.2d 707 (1946); [Kredit v. Ryan](#), 68 S.D. 274, 1 N.W.2d 813 (1942).
- ³ [Gorlack v. Ferrari](#), 184 Cal. App. 2d 702, 7 Cal. Rptr. 699 (4th Dist. 1960).
- ⁴ [Grooms v. Fervida](#), 182 Ind. App. 664, 396 N.E.2d 405 (1979).
- ⁵ [Hill v. Day](#), 168 Kan. 604, 215 P.2d 219 (1950) (bond constitutes a waiver of any right to object to the legality of an arrest without a warrant as the person is held by the force of the recognizance); [Worden v. Davis](#), 195 N.Y. 391, 88 N.E. 745 (1909) (no waiver, as in bondsman's custody).

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§ 57. Waiver as defense against civil liability for false arrest or imprisonment—Pleading guilty or accepting criminal disposition

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  10

The general rule is that civil liability for an illegal arrest is not waived by pleading guilty to the offense.¹ If, however, the imprisonment is claimed to have been illegal because the plaintiff was arrested without a warrant and without probable cause, a guilty plea to the offense charged or a conviction may be conclusive as to the existence of probable cause and may thus operate as a bar.²

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Footnotes

¹ [Anderson v. Foster](#), 73 Idaho 340, 252 P.2d 199 (1953); [Hotzel v. Simmons](#), 258 Wis. 234, 45 N.W.2d 683 (1951).

² [Pete v. Metcalfe](#), 8 F.3d 214 (5th Cir. 1993); [Hanson v. City of Snohomish](#), 121 Wash. 2d 552, 852 P.2d 295 (1993).

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§ 58. Superior's orders as defense against civil liability for false arrest or imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  11

Forms

Forms relating to command of superior, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\)](#) [Search Query](#)]

The fact that a police officer making an unlawful arrest was acting under direct orders of a superior is not generally a defense to an action for false imprisonment.¹

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Footnotes

¹ [Mason v. Wrightson](#), 205 Md. 481, 109 A.2d 128 (1954); [Christ v. McDonald](#), 152 Or. 494, 52 P.2d 655 (1935).

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§ 59. Res judicata as defense against civil liability for false arrest or imprisonment

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A.L.R. Library

Judgment in false imprisonment action as res judicata in later malicious prosecution action, or vice versa, 86 A.L.R.2d 1385

A matter that was in issue and determined in a prior proceeding may be res judicata in an action for false imprisonment.¹

There is authority that the actions of false arrest and imprisonment are so distinct that a recovery in one does not bar recovery in the other.² Where, however, an issue is fundamental to both the malicious prosecution and false imprisonment actions, the determination of that issue in one is conclusive in the other.³

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Footnotes

¹ [Witherspoon v. U.S.](#), 838 F.2d 803 (5th Cir. 1988) (prior civil rights litigation); [Hanson v. City of Snohomish](#), 121 Wash. 2d 552, 852 P.2d 295 (1993) (identification resolved in a prior criminal proceeding).

² [Gore v. Gorman's, Inc.](#), 148 F. Supp. 241 (W.D. Mo. 1956); [Ira v. Columbia Food Co.](#), 226 Or. 566, 360 P.2d 622, 86 A.L.R.2d 1378 (1961).

³

[Robinson v. Chicago Great Western Ry. Co.](#), 154 F. Supp. 626 (W.D. Mo. 1957) (authority of defendant's agents).

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2. Justification

a. In General

§ 60. Exercise of rights or duties as justification for false arrest or imprisonment in civil action

[Topic Summary](#) [Correlation Table](#) [References](#)

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West's Key Number Digest, [False Imprisonment](#)  11

A social worker who has a statutory duty to report suspected child abuse and has reasonable cause to believe that it has occurred is not liable for false imprisonment for taking a child to an emergency room.¹

A determination of the reasonableness of a bus driver's action in taking passengers damaging the bus to a police station requires consideration of the need to protect the persons and property in the driver's charge, the duty to aid the investigation and apprehension of those inflicting damage, the manner and place of the occurrence, and the feasibility and practicality of other courses of action.²

The relationship of husband and wife may authorize the rendition of substituted consent to treatment under some circumstances that might otherwise amount to false imprisonment.³

One may be privileged to interfere with the liberty of another, within limits, for the purpose of defending a third person or oneself,⁴ so long as that privilege is exercised, as provided by law, for the purpose of defending against an unlawful force.⁵

An innkeeper's right to exclude the disorderly does not include the right to take a patron, who is willing to leave an establishment, to a private place, against the customer's will, to read that person an eviction notice.⁶

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Footnotes

¹ [Curtis v. State Dept. for Children and Their Families](#), 522 A.2d 203 (R.I. 1987).

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² [Sindle v. New York City Transit Authority](#), 33 N.Y.2d 293, 352 N.Y.S.2d 183, 307 N.E.2d 245 (1973).

³ [Lolley v. Charter Woods Hosp., Inc.](#), 572 So. 2d 1223 (Ala. 1990).

⁴ [Herold v. Shagnasty's, Inc.](#), 690 N.W.2d 699 (Iowa Ct. App. 2004) (bar patron restrained during altercation to prevent further assaults); [Drabek v. Sabley](#), 31 Wis. 2d 184, 142 N.W.2d 798, 20 A.L.R.3d 1435 (1966).

⁵ [State v. Brown](#), 235 Neb. 374, 455 N.W.2d 547 (1990).

⁶ [Simone v. Golden Nugget Hotel and Casino](#), 844 F.2d 1031, 25 Fed. R. Evid. Serv. 399 (3d Cir. 1988).

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2. Justification

a. In General

§ 61. Acting under advice of counsel as justification for false arrest or imprisonment in civil action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  14

It is generally held that reliance on the advice of counsel, whether private or public (such as a prosecuting or county attorney), is a complete defense to an action of false arrest or imprisonment,¹ although there is some contrary authority.² The defense is available only if the advice was predicated upon a full, correct, and fair statement of all facts bearing upon the guilt of the accused, and the recipient of the advice acted on it in good faith.³

Reliance on the advice of counsel has been recognized as a defense in a suit for false imprisonment based on the institution of insanity proceedings, provided the client had made a full disclosure and acted in good faith.⁴

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Footnotes

¹ [Toomey v. Tolin](#), 311 So. 2d 678 (Fla. 4th DCA 1975); [Karow v. Student Inns, Inc.](#), 43 Ill. App. 3d 878, 2 Ill. Dec. 515, 357 N.E.2d 682, 98 A.L.R.3d 531 (4th Dist. 1976).

² [Butcher v. Adams](#), 310 Ky. 205, 220 S.W.2d 398 (1949) (reliance on legal opinion of county attorney).

³ [Karow v. Student Inns, Inc.](#), 43 Ill. App. 3d 878, 2 Ill. Dec. 515, 357 N.E.2d 682, 98 A.L.R.3d 531 (4th Dist. 1976); [Feldman v. Town of Bethel](#), 106 A.D.2d 695, 484 N.Y.S.2d 147 (3d Dep't 1984) (attorney had not advised a town board concerning a reporter's right to tape record the board meetings).

⁴ [Rosvall v. Provost](#), 279 Minn. 119, 155 N.W.2d 900 (1968).

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2. Justification

a. In General

§ 62. Reliance on invalid statute or ordinance as justification for false arrest or imprisonment in civil action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 10

A.L.R. Library

[False imprisonment: civil liability of private person as affected by invalidity of statute or ordinance for violation of which arrest was made](#), 16 A.L.R.3d 535

A confinement is “privileged,” precluding a false imprisonment claim, to the extent that it is imposed under color of law or regulation.¹ Therefore, according to some courts, where an arrest or imprisonment would ordinarily have been justified under the terms of a statute or ordinance, the fact that the provision in question subsequently was held unconstitutional or void does not preclude the defense of justification by a private person.² However, based on a requirement of good faith, an arrest under a statute that the complaining witness knows is invalid is actionable.³

Other courts have taken the view that an arrest made at the instance of a private person under an enactment that is subsequently found to be unconstitutional or invalid is false and the private person is liable for false imprisonment.⁴ Under this view, it has been said that an arrest under an unconstitutional statute is *prima facie* false imprisonment, and when the statute is declared unconstitutional is inconsequential since unconstitutional measures are deemed to be so from their inception.⁵

Footnotes

- ¹ [Hudson v. State](#), 35 Misc. 3d 241, 937 N.Y.S.2d 529 (Ct. Cl. 2011), aff'd, [115 A.D.3d 1020](#), 981 N.Y.S.2d 479 (3d Dep't 2014).
- ² [Rush v. Buckley](#), 100 Me. 322, 61 A. 774 (1905); [Gilbert v. Satterlee](#), 101 A.D. 313, 91 N.Y.S. 960 (3d Dep't 1905). As to liability or immunity of judicial officers acting under an invalid law, see [§ 94](#).
- ³ [Miller v. Stinnett](#), 257 F.2d 910 (10th Cir. 1958).
- ⁴ [Williams v. Carolina Coach Co.](#), 111 F. Supp. 329 (E.D. Va. 1952), judgment aff'd, [207 F.2d 408](#) (4th Cir. 1953); [Coleman v. Mitnick](#), 137 Ind. App. 125, 202 N.E.2d 577, 16 A.L.R.3d 527 (1964).
- ⁵ [Coleman v. Mitnick](#), 137 Ind. App. 125, 202 N.E.2d 577, 16 A.L.R.3d 527 (1964).

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John Bourdeau, J.D.

I. Civil Actions

D. Defenses

2. Justification

a. In General

§ 63. Temporary detention or restraint of insane person as justification for false arrest or imprisonment in civil action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 10

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[Right, without judicial proceeding, to arrest and detain one who is, or is suspected of being, mentally deranged, 92 A.L.R.2d 570](#)

Trial Strategy

[Wrongful Confinement to a Mental Health or Developmental Disabilities Facility, 44 Am. Jur. Proof of Facts 3d 217](#)

One is justified in restraining, without legal proceedings, a dangerous insane person, and generally an action for false arrest or imprisonment will not lie.¹ The justification applies whether the person is a danger to him- or herself or others.² However, there is usually not a lawful excuse for restraining an insane person who is not dangerous without judicial proceedings.³

It is frequently held that the right to arrest depends on the existence of the fact of insanity and of the necessity for restraint, rather than upon a mere belief.⁴ Under this view, the person who makes the arrest assumes the responsibility for an erroneous

guess about the person's condition.⁵ On the other hand, it is sometimes held or recognized that a summary arrest of a person may be justified on the ground that the person who detained the other had reasonable grounds to believe and did believe at the time that the person arrested was dangerously insane.⁶

An imprisonment on the ground of insanity, even if initially justifiable, may become unlawful if the detention is protracted unnecessarily without the commencement of sanity proceedings.⁷

Restraint for an emergency detention upon an allegation of mental illness or dangerousness that is purely pretextual may subject the arresting party or official to liability for false imprisonment.⁸

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Footnotes

¹ Crawford v. Brown, 321 Ill. 305, 151 N.E. 911, 45 A.L.R. 1457 (1926); Maxwell v. Maxwell, 189 Iowa 7, 177 N.W. 541, 10 A.L.R. 482 (1920); Warner v. State, 297 N.Y. 395, 79 N.E.2d 459 (1948).
As to commitment of mentally ill persons under judicial proceedings, see §§ 33, 34.

² A.G. v. Paradise Valley Unified School Dist. No. 69, 815 F.3d 1195, 328 Ed. Law Rep. 495 (9th Cir. 2016) (applying Arizona law).

³ Belger v. Arnott, 344 Mass. 679, 183 N.E.2d 866 (1962); Warner v. State, 297 N.Y. 395, 79 N.E.2d 459 (1948).

⁴ Crawford v. Brown, 321 Ill. 305, 151 N.E. 911, 45 A.L.R. 1457 (1926); Maxwell v. Maxwell, 189 Iowa 7, 177 N.W. 541, 10 A.L.R. 482 (1920).

⁵ Crawford v. Brown, 321 Ill. 305, 151 N.E. 911, 45 A.L.R. 1457 (1926).

⁶ Christiansen v. Weston, 36 Ariz. 200, 284 P. 149 (1930); Plancich v. Williamson, 57 Wash. 2d 367, 357 P.2d 693, 92 A.L.R.2d 559 (1960).

⁷ Mulberry v. Fuellhart, 203 Pa. 573, 53 A. 504 (1902).

⁸ Wagenmann v. Adams, 829 F.2d 196 (1st Cir. 1987).

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I. Civil Actions

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2. Justification

b. Detention of Suspected Shoplifters

(1) Common Law Rule

§ 64. Common law rule as to detention of suspected shoplifter as justification in civil action for false arrest or imprisonment, generally

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West's Key Number Digest

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Forms

Forms relating to shoplifters and thieves, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

At common law, the owner of property, in the exercise of the inherent right to protect it, is ordinarily justified in restraining another who seeks to damage or interfere with it if the restraint is reasonable in time and manner.¹ Merchants who detain individuals whom they have probable cause to believe are about to take their property are privileged against a false imprisonment action if the detention is for a reasonable time in a reasonable manner.² Probable cause may be a defense, even though the apparent crime is only a misdemeanor,³ although there is also authority that it is not a defense if the offense constitutes a mere misdemeanor.⁴ Liability for false imprisonment will be imposed if there are insufficient grounds to justify the detention.⁵ Liability for false arrest or imprisonment may be imposed if the defendant arrests the suspected individual and takes the person into custody, where doing so is not justified under the rules of arrest.⁶

Footnotes

- ¹ Parrott v. Bank of America Nat. Trust & Savings Ass'n, 97 Cal. App. 2d 14, 217 P.2d 89, 35 A.L.R.2d 263 (2d Dist. 1950); Teel v. May Department Stores Co., 348 Mo. 696, 155 S.W.2d 74, 137 A.L.R. 495 (1941).
- ² Fermino v. Fedco, Inc., 7 Cal. 4th 701, 30 Cal. Rptr. 2d 18, 872 P.2d 559 (1994).
- ³ Collyer v. S.H. Kress Co., 5 Cal. 2d 175, 54 P.2d 20 (1936); Teel v. May Department Stores Co., 348 Mo. 696, 155 S.W.2d 74, 137 A.L.R. 495 (1941).
- ⁴ Jefferson Dry Goods Co. v. Stoess, 304 Ky. 73, 199 S.W.2d 994 (1947).
- ⁵ Banks v. Food Town, Inc., 98 So. 2d 719 (La. Ct. App. 1st Cir. 1957); J. C. Penney Co. v. Cox, 246 Miss. 1, 148 So. 2d 679 (1963) (no evidence that anyone saw plaintiff take anything).
- ⁶ Szymanski v. Great Atlantic & Pacific Tea Co., 79 Ohio App. 407, 35 Ohio Op. 177, 74 N.E.2d 205 (6th Dist. Lucas County 1947); Martin v. Castner-Knott Dry Goods Co., 27 Tenn. App. 421, 181 S.W.2d 638 (1944). As to justification of an arrest without a warrant, see §§ 71 to 75.

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I. Civil Actions

D. Defenses

2. Justification

b. Detention of Suspected Shoplifters

(1) **Common Law Rule**

§ 65. Common law rule as to detention of shoplifter based on prior theft as justification in civil action for false arrest or imprisonment

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West's Key Number Digest

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The right to detain the person suspected of wrongdoing exists only during commission of the offense and does not arise where the offense was completed at a prior time.¹ There is no privilege, if the victim is not detained for an investigation but is held for the purpose of compelling restitution² or securing a confession³ for a prior theft. However, at common law, there is a limited privilege for a person to recapture personal property, in fresh pursuit, using reasonable force not calculated to inflict serious bodily harm, after there has been a demand for the return of the property and with the proviso that the person is acting correctly.⁴

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Footnotes

¹ [Moffatt v. Buffums' Inc.](#), 21 Cal. App. 2d 371, 69 P.2d 424 (2d Dist. 1937); [Teel v. May Department Stores Co.](#), 348 Mo. 696, 155 S.W.2d 74, 137 A.L.R. 495 (1941).

² [Parrott v. Bank of America Nat. Trust & Savings Ass'n](#), 97 Cal. App. 2d 14, 217 P.2d 89, 35 A.L.R.2d 263 (2d Dist. 1950).

³ [Moffatt v. Buffums' Inc.](#), 21 Cal. App. 2d 371, 69 P.2d 424 (2d Dist. 1937); [Teel v. May Department Stores Co.](#), 348 Mo. 696, 155 S.W.2d 74, 137 A.L.R. 495 (1941).

⁴ [Gortarez By and Through Gortarez v. Smitty's Super Valu, Inc.](#), 140 Ariz. 97, 680 P.2d 807 (1984).

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2. Justification

b. Detention of Suspected Shoplifters

(2) Under Statute

§ 66. Statutory rule as to detention of suspected shoplifter as justification in civil action for false arrest or imprisonment, generally

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[Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters, 47 A.L.R.3d 998](#)

Forms

Forms relating to shoplifters and thieves, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Although store employees are generally held to act as private individuals and not as police officers,¹ various state statutes giving a merchant a qualified privilege to detain suspected shoplifters usually provide that merchants or their employees or agents may detain, in good faith and upon probable cause or reasonable grounds, any person believed to be removing goods

for sale from the store without paying for them, provided that the detention is for a reasonable time and in a reasonable manner.² For instance, to be entitled to civil immunity for the use of force to detain a person suspected of shoplifting, (1) the person effecting the detention must be a merchant, or a specifically authorized employee of a merchant; (2) the party making the detention must have reasonable cause to believe that the detained person has committed theft; (3) unreasonable force may not be used in detaining the suspect for interrogation; (4) the detention must occur on the merchant's premises; and (5) the detention may not last longer than 60 minutes.³

Observation:

Such statutes are a response by to the long, continuing epidemic of shoplifting.⁴

A statute may state a presumption⁵ that a person concealing unpurchased goods is taking the goods with the intention of depriving the owner of them, thus warranting a reasonable detention by a merchant.⁶

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Footnotes

¹ [Orellana v. Macy's Retail Holdings, Inc.](#), 53 Misc. 3d 622, 36 N.Y.S.3d 547 (Sup 2016).

² [K-Mart Corp. v. Washington](#), 109 Nev. 1180, 866 P.2d 274 (1993); [Dillard Department Stores, Inc. v. Silva](#), 148 S.W.3d 370 (Tex. 2004).

³ [Rhymes v. Winn-Dixie Louisiana, Inc.](#), 58 So. 3d 1068 (La. Ct. App. 3d Cir. 2011).

⁴ [Hogue v. City of Fort Wayne](#), 599 F. Supp. 2d 1009 (N.D. Ind. 2009).

⁵ § 129.

⁶ [Murray v. Wal-Mart, Inc.](#), 874 F.2d 555 (8th Cir. 1989).

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- I. Civil Actions
- D. Defenses
- 2. Justification
- b. Detention of Suspected Shoplifters
- (2) Under Statute

§ 67. Applicability in civil action of merchant or shopkeeper's privilege statute as justifying detention of suspected shoplifter

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West's Key Number Digest, [False Imprisonment](#)  11

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[Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters](#), 47 A.L.R.3d 998

A merchant's privilege statute may encompass substituting bogus price tags as "shoplifting"¹ or passing counterfeit money as "larceny."²

A shoplifting statute privilege does not apply to the detention of a person who came to the assistance of a suspected shoplifter.³

Despite a provision that the detention must take place on the merchant's premises, shoplifting statutes provide a defense to a merchant who stopped a suspected shoplifter after the suspect had left the store, the court reasoning that the area immediately outside the store is part of the "premises" as intended by the statute.⁴

Formal arrest of the suspected shoplifter is not necessary to invoke the protection of the statute in favor of the merchant.⁵

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Footnotes

¹ [S. S. Kresge Co. v. Carty](#), 120 Ga. App. 170, 169 S.E.2d 735 (1969).

² [Wolin v. Abraham and Straus](#), 64 Misc. 2d 982, 316 N.Y.S.2d 377 (Sup 1970).

³ [Peak v. W. T. Grant Co.](#), 386 S.W.2d 685 (Mo. Ct. App. 1964).

⁴ [Simmons v. J. C. Penney Co.](#), 186 So. 2d 358 (La. Ct. App. 1st Cir. 1966).

⁵ [F. B. C. Stores, Inc. v. Duncan](#), 214 Va. 246, 198 S.E.2d 595 (1973).

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- (2) Under Statute

§ 68. Persons encompassed by merchant or shopkeeper's privilege statute justifying in civil action detention of suspected shoplifter

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[Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters, 47 A.L.R.3d 998](#)

Forms

Forms relating to shoplifters, thieves, and employees, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Shoplifter detention statutes have sometimes been applied to cases involving the detention of employees suspected of theft,¹ but there is also authority that such a statute is not applicable in an employer-employee situation because it does not involve shoplifting.²

A statute providing a limited privilege with respect to detention of suspected shoplifters did not provide a defense for a pari-mutuel racetrack in a false imprisonment action brought by one who was detained on suspicion of cashing a nonwinning ticket since a pari-mutuel operator was not a “merchant” within the meaning of the statute.³

A statute granting immunity from liability for false arrest to “a police officer, a merchant, or a merchant’s employee,” did not include agents, so that an independent contractor that employed all the security guards assigned to a supermarket was liable for the false arrest of a customer who was erroneously accused of shoplifting by a security guard who was not an employee of the merchant.⁴

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Footnotes

¹ [Tumbarella v. Kroger Co., 85 Mich. App. 482, 271 N.W.2d 284 \(1978\); Faulkenberry v. Springs Mills, Inc., 271 S.C. 377, 247 S.E.2d 445 \(1978\).](#)

² [General Motors Corp. v. Piskor, 27 Md. App. 95, 340 A.2d 767 \(1975\), judgment aff'd in part, rev'd in part on other grounds, 277 Md. 165, 352 A.2d 810 \(1976\)](#) (auto assembly plant employee).

³ [Washington County Kennel Club, Inc. v. Edge, 216 So. 2d 512 \(Fla. 1st DCA 1968\).](#)

⁴ [Bishop v. Bockoven, Inc., 199 Neb. 613, 260 N.W.2d 488 \(1977\).](#)

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- (2) Under Statute

§ 69. Probable cause and reasonable grounds for detention under merchant or shopkeeper's privilege statutes justifying in civil action detention of suspected shoplifter

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[Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters](#), 47
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Store detectives and other employees of retail stores are empowered by statute to arrest or detain individuals suspected of shoplifting, and like police officers they are relieved of civil liability.¹ A shoplifting detention act provides immunity only if there is probable² or sufficient³ cause, or a reasonable basis,⁴ grounds⁵ suspicion,⁶ or cause⁷ to suspect that the detainee was involved in a theft. Probable cause or reasonable grounds for the detention of a customer justified by a statute may have substantially the same meaning, and their existence is generally a question of fact.⁸ Thus, a merchant has probable cause to detain a person when the totality of the facts and circumstances within the merchant's knowledge, and of which the merchant has reasonably trustworthy information, are sufficient to warrant a merchant of reasonable caution to believe that the person is willfully concealing merchandise.⁹ According to some courts, however, reasonable cause for a merchant to detain a suspected shoplifter is something less than probable cause and requires that the detaining officer have articulable knowledge of particular facts sufficiently reasonable to suspect the detained person of criminal activity.¹⁰ The existence of probable cause or reasonable grounds is judged against the objective standard of the facts available to the detaining party at the moment.¹¹

Observation:

The fact-specific determination of reasonableness is usually a question for the jury.¹²

There must be sufficient cause for suspicion,¹³ and mere suspicion that a person is shoplifting is insufficient to create probable cause for detention under a shoplifting statute.¹⁴ However, the application of the statute is not dependent upon actual guilt so long as the merchant acted in good faith.¹⁵ The fact that, under a statute, the merchant may act upon probable cause or reasonable grounds leaves room for honest mistake,¹⁶ which might result in some embarrassment to innocent customers.¹⁷ On the other hand, there is no showing of reasonable grounds if customers were selected at random for detention and searches.¹⁸

While a statute may require that the merchant observe the shoplifting, not merely believe that it occurred,¹⁹ it has usually been held that when a merchant detains a customer for investigation of possible shoplifting entirely upon the word of other persons, and not upon personal observation, the test of probable cause is whether the circumstances, as they appeared to the informer, were sufficient to give the informer probable cause to believe that the customer was shoplifting.²⁰ The merchant's subsequent failure to attempt to confirm the suspicions by reasonable investigation may then be an important factor in determining that insufficient cause existed for detaining a suspected shoplifter.²¹

A statutory presumption of shoplifting, arising when there is a knowing²² or willful²³ concealment of unpurchased items, may have an impact on the probable cause determination.²⁴ In such a situation, when merchandise is concealed, there must also be circumstances which reflect that the purpose of the concealment is adverse to the store owner's right to be paid for the merchandise before a conclusion can be made that the merchandise was willfully concealed, as necessary to invoke the privilege.²⁵

Probable cause may also be based on the store manager's personal knowledge that a cashier was undercharging patrons and the patrons' admission that they were in possession of goods for which they did not pay, even though they denied stealing them.²⁶

CUMULATIVE SUPPLEMENT

Cases:

Police officer had reasonable suspicion to believe that store customer had committed criminal offense of shoplifting, justifying his arrest of customer for failing to disclose his identity to officer and providing officer with qualified immunity from suit for false arrest, even though customer ultimately proved that he had purchased items in his possession from store; customer's refusal to provide identification was made despite knowing that officer thought that store had a right to verify that shoppers had not committed theft by forcing them to wait in long lines and present their receipts and recent purchases for inspection before being allowed to leave the store. *Ohio Rev. Code Ann. § 2921.29(A)*. *McKee v. McCann*, 2017-Ohio-4072, 102 N.E.3d 38 (Ohio Ct. App. 8th Dist. Cuyahoga County 2017).

[END OF SUPPLEMENT]

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Footnotes

¹ *Orellana v. Macy's Retail Holdings, Inc.*, 53 Misc. 3d 622, 36 N.Y.S.3d 547 (Sup 2016).

- 2 Dietz v. Finlay Fine Jewelry Corp., 754 N.E.2d 958 (Ind. Ct. App. 2001); Barkley v. McKeever Enterprises, Inc., 456 S.W.3d 829 (Mo. 2015).
- 3 Holguin v. Sally Beauty Supply Inc., 150 N.M. 636, 2011-NMCA-100, 264 P.3d 732 (Ct. App. 2011).
- 4 Carr v. H.E. Butt Grocery Co., 2009 WL 3230834 (Tex. App. Austin 2009).
- 5 Orellana v. Macy's Retail Holdings, Inc., 53 Misc. 3d 622, 36 N.Y.S.3d 547 (Sup 2016).
- 6 Barkley v. McKeever Enterprises, Inc., 456 S.W.3d 829 (Mo. 2015).
- 7 Rhymes v. Winn-Dixie Louisiana, Inc., 58 So. 3d 1068 (La. Ct. App. 3d Cir. 2011).
- 8 Coblyn v. Kennedy's, Inc., 359 Mass. 319, 268 N.E.2d 860, 47 A.L.R.3d 991 (1971).
- 9 Holguin v. Sally Beauty Supply Inc., 150 N.M. 636, 2011-NMCA-100, 264 P.3d 732 (Ct. App. 2011).
- 10 Cariere v. The Kroger Store, 208 So. 3d 987 (La. Ct. App. 2d Cir. 2016).
- 11 S. S. Kresge Co. v. Carty, 120 Ga. App. 170, 169 S.E.2d 735 (1969); Dietz v. Finlay Fine Jewelry Corp., 754 N.E.2d 958 (Ind. Ct. App. 2001) (person of reasonable caution); Holguin v. Sally Beauty Supply Inc., 150 N.M. 636, 2011-NMCA-100, 264 P.3d 732 (Ct. App. 2011).
- 12 Reyes v. Dollar Tree Stores, Inc., 221 F. Supp. 3d 817 (W.D. Tex. 2016) (applying Texas law).
- 13 Vanzante v. Wal-Mart Stores, Inc., 670 N.W.2d 432 (Iowa Ct. App. 2003) (report that goods unwrapped in the store were placed in the plaintiff's purse was sufficient, although the patron had previously paid for the goods).
- 14 Clark v. I. H. Rubenstein, Inc., 326 So. 2d 497 (La. 1976) (alarm not enough since it had previously been triggered in error); Coblyn v. Kennedy's, Inc., 359 Mass. 319, 268 N.E.2d 860, 47 A.L.R.3d 991 (1971).
- 15 Dolgencorp, LLC v. Spence, 2016 WL 5817690 (Ala. 2016); Dillard Department Stores, Inc. v. Silva, 148 S.W.3d 370 (Tex. 2004).
- 16 Alvarado v. City of Dodge City, 238 Kan. 48, 708 P.2d 174 (1985).
- 17 Messer v. Robinson, 250 S.W.3d 344 (Ky. Ct. App. 2008).
- 18 Zohn v. Menard, Inc., 598 N.W.2d 323 (Iowa Ct. App. 1999).
- 19 Cruz v. Johnson, 823 A.2d 1157 (R.I. 2003).
- 20 Frison v. Delchamps Store No. 11, 507 So. 2d 478 (Ala. 1987) (sufficiency of informer's statement properly submitted to the jury); Gortarez By and Through Gortarez v. Smitty's Super Valu, Inc., 140 Ariz. 97, 680 P.2d 807 (1984) (store clerk's report).
- 21 Wilde v. Schwegmann Bros. Giant Supermarkets, Inc., 160 So. 2d 839 (La. Ct. App. 4th Cir. 1964); Southwest Drug Stores of Miss., Inc. v. Garner, 195 So. 2d 837, 29 A.L.R.3d 953 (Miss. 1967).
- 22 Wal-Mart Stores, Inc. v. Yarbrough, 284 Ark. 345, 681 S.W.2d 359 (1984).
- 23 Holguin v. Sally Beauty Supply Inc., 150 N.M. 636, 2011-NMCA-100, 264 P.3d 732 (Ct. App. 2011).
- 24 Wal-Mart Stores, Inc. v. Yarbrough, 284 Ark. 345, 681 S.W.2d 359 (1984).
- 25 Holguin v. Sally Beauty Supply Inc., 150 N.M. 636, 2011-NMCA-100, 264 P.3d 732 (Ct. App. 2011).
- 26 Herrington v. Red Run Corp., 148 Md. App. 357, 811 A.2d 894 (2002).

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32 Am. Jur. 2d False Imprisonment § 70

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- I. Civil Actions
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- 2. Justification
- b. Detention of Suspected Shoplifters
- (2) Under Statute

§ 70. Reasonable manner and time of detention under merchant or shopkeeper's privilege statutes justifying in civil action detention of suspected shoplifter

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[Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters, 47 A.L.R.3d 998](#)

Probable cause¹ is only one element of a statutory defense against wrongful detention of a suspected shoplifter, since the merchant must also show that the detention was in a reasonable manner, and for a reasonable length of time.² Accordingly, a merchant may be required by statute to show that the detention occurred on the merchant's premises, and that it lasted no longer than 60 minutes.³ Furthermore, an originally reasonable detention is not protected by a statute if the actions taken in connection with the detention become unreasonable.⁴ Thus, a detention lawfully made that is continued for an unreasonable time, after it is determined that there was no further reason to continue holding a suspected shoplifter,⁵ and that the suspicion is groundless, is not privileged.⁶

For the purpose of such a statute, detentions have been found unreasonable in time or manner where persons acting for the store refused to search the customers' pocket books, call the police, or explain why the customers could not leave the store⁷ or refused to look at receipts the customer claimed to have⁸ or the detention exceeded a statutory time limit.⁹ Detentions are not reasonable if continued for the purpose of securing a confession or a release from the suspect¹⁰ or where a person acting on

behalf of the merchant is unnecessarily rude or uses excessive¹¹ or unreasonable¹² force. On the other hand, the use or threatened use of reasonable force is privileged,¹³ and a merchant may be granted summary judgment dismissing a false imprisonment claim where the plaintiff fails to raise triable issues as to whether the manner and length of detention were unreasonable.¹⁴

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Footnotes

¹ § 69.

² Barkley v. McKeever Enterprises, Inc., 456 S.W.3d 829 (Mo. 2015); Walters v. J.C. Penney Co., Inc., 2003 OK 100, 82 P.3d 578 (Okla. 2003).

³ Rhymes v. Winn-Dixie Louisiana, Inc., 58 So. 3d 1068 (La. Ct. App. 3d Cir. 2011).

⁴ Dietz v. Finlay Fine Jewelry Corp., 754 N.E.2d 958 (Ind. Ct. App. 2001); Rogers v. T.J.X. Companies, Inc., 329 N.C. 226, 404 S.E.2d 664 (1991) (employee impersonated a police officer, badgered the detainee to confess, and forced the detainee to sign a release).

⁵ Adams v. Zayre Corp., 148 Ill. App. 3d 704, 102 Ill. Dec. 121, 499 N.E.2d 678 (2d Dist. 1986); Hardin v. Barker's of Monroe, Inc., 336 So. 2d 1031 (La. Ct. App. 2d Cir. 1976) (customer had placed own children's shoes in his pockets, not the store's).

⁶ Latek v. K Mart Corp., 224 Neb. 807, 401 N.W.2d 503 (1987).

⁷ Ayscue v. Mullen, 78 N.C. App. 145, 336 S.E.2d 863 (1985).

⁸ Dillard Department Stores, Inc. v. Silva, 148 S.W.3d 370 (Tex. 2004).

⁹ Attaldo v. Schwegmann Giant Supermarkets, Inc., 469 So. 2d 1132 (La. Ct. App. 4th Cir. 1985), writ denied, 475 So. 2d 354 (La. 1985).

¹⁰ Silvia v. Zayre Corp., 233 So. 2d 856 (Fla. 3d DCA 1970); Wilde v. Schwegmann Bros. Giant Supermarkets, Inc., 160 So. 2d 839 (La. Ct. App. 4th Cir. 1964).

¹¹ K-Mart Corp. v. Washington, 109 Nev. 1180, 866 P.2d 274 (1993); Wal-Mart Stores, Inc. v. Cockrell, 61 S.W.3d 774 (Tex. App. Corpus Christi 2001) (search under bandage was unreasonable where the security guard did not have probable cause to believe that the customer had hidden merchandise there).

¹² Rhymes v. Winn-Dixie Louisiana, Inc., 58 So. 3d 1068 (La. Ct. App. 3d Cir. 2011).

¹³ Barkley v. McKeever Enterprises, Inc., 456 S.W.3d 829 (Mo. 2015).

¹⁴ Conteh v. Sears, Roebuck and Co., 38 A.D.3d 314, 831 N.Y.S.2d 408 (1st Dep't 2007).

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False Imprisonment
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- I. Civil Actions
- D. Defenses
- 2. Justification
- c. Arrest Without Warrant

§ 71. Justification of arrest without warrant in civil action for false arrest or imprisonment, generally

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West's Key Number Digest, [False Imprisonment](#)  11

Forms

Forms relating to arrest without warrant, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A false imprisonment action may not be maintained if one is properly arrested by lawful authority without a warrant.¹ Such an arrest justifies only a reasonable period of continued detention for the purpose of bringing the person before a magistrate.²

The defense of a police officer's exercise of professional judgment in making an arrest is not available if the officer arrests an individual solely on the basis of another person's statement.³

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Footnotes

¹ [Hill v. Levy](#), 117 Cal. App. 2d 667, 256 P.2d 622 (4th Dist. 1953); [Bushardt v. United Inv. Co.](#), 121 S.C. 324, 113 S.E. 637, 35 A.L.R. 637 (1922).

As to when an arrest without a warrant is allowed, see [Am. Jur. 2d, Arrest §§ 96 to 102](#).

² [Thompson v. Olson, 798 F.2d 552 \(1st Cir. 1986\).](#)

As to a delay in presenting the suspect before a magistrate constituting false imprisonment, see § 29.

³ [Corporate Property Investors v. Milon, 249 Ga. App. 699, 549 S.E.2d 157 \(2001\)](#) (statement that store security guard witnessed plaintiff shoplifting).

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32 Am. Jur. 2d False Imprisonment § 72

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I. Civil Actions

D. Defenses

2. Justification

c. Arrest Without Warrant

§ 72. Justification of felony arrest without warrant in civil action for false arrest or imprisonment

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Forms

Forms relating to arrest without warrant, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

An officer may justify an arrest and will not be liable for false imprisonment where there are reasonable grounds to believe that a felony has been committed and that the person to be arrested is the one who committed it, even though it eventually appears that no felony was actually committed.¹ However, since a private individual may arrest without a warrant in a felony case only if the crime was committed in his or her presence, and on probable cause for past felonies, provided they had actually been committed,² an arrest by a private individual without a warrant may give rise to an action for false imprisonment if the arrested person was not guilty, even though an officer might have been justified in making the arrest under similar circumstances.³

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Footnotes

¹ [Goodrich v. Lawrence](#), 138 Fla. 287, 189 So. 233 (1939); [Tucker v. Vornbrock](#), 270 Ky. 712, 110 S.W.2d 659 (1937).

² Am. Jur. 2d, Arrest § 47.

³ Scanlon v. Flynn, 465 F. Supp. 32 (S.D. N.Y. 1978); Melton v. Rickman, 225 N.C. 700, 36 S.E.2d 276, 162 A.L.R. 793 (1945).

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32 Am. Jur. 2d False Imprisonment § 73

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- I. Civil Actions
- D. Defenses
- 2. Justification
- c. Arrest Without Warrant

§ 73. Justification of misdemeanor arrest without warrant in civil action for false arrest or imprisonment

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Forms

Forms relating to arrest without warrant, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Liability for false arrest or imprisonment may arise when a private individual¹ or a peace officer² makes an arrest for a misdemeanor and the offense was actually not committed, even though the arrest is made on reasonable grounds and in good faith. On the other hand, it is frequently held that the doctrine of probable or reasonable cause is a good defense in an action for false arrest or imprisonment where the act was actually committed in an officer's presence and where the offender's conduct would cause a reasonable person to conclude that a public offense was being committed.³

Under the view that a private person has no power to arrest one committing a misdemeanor in the person's presence unless it amounts to a breach of the peace, the usual shoplifting incident is not considered disruptive of the public peace.⁴

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Footnotes

¹ [Banks v. Food Town, Inc.](#), 98 So. 2d 719 (La. Ct. App. 1st Cir. 1957).

² [Adair v. Williams](#), 24 Ariz. 422, 210 P. 853, 26 A.L.R. 278 (1922); [Ware v. Dunn](#), 80 Cal. App. 2d 936, 183 P.2d 128 (2d Dist. 1947).

³ [Coverstone v. Davies](#), 38 Cal. 2d 315, 239 P.2d 876 (1952); [Cave v. Cooley](#), 1944-NMSC-050, 48 N.M. 478, 152 P.2d 886 (1944).

⁴ [Shaw v. May Dept. Stores Co.](#), 268 A.2d 607 (D.C. 1970).

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32 Am. Jur. 2d False Imprisonment § 74

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False Imprisonment
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- I. Civil Actions
- D. Defenses
- 2. Justification
- c. Arrest Without Warrant

§ 74. Probable cause justifying arrest without warrant in civil action for false arrest or imprisonment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Probable cause is a defense to actions for false arrest¹ and false imprisonment,² so that when probable cause is established, false arrest and false imprisonment claims must necessarily fail, even if the plaintiff's criminal convictions are eventually reversed.³ Thus, a later acquittal on the underlying criminal charge does not establish want of probable cause for the purpose of an action for false arrest or imprisonment,⁴ although it has also been said that while not conclusive, the dismissal of the charge is evidence that probable cause for the arrest was lacking.⁵

Probable cause is a reasonable cause or an honest suspicion or belief founded upon sufficiently strong facts to warrant an average person believing that the charge is true.⁶

Observation:

In some jurisdictions, the terms "reasonable cause" for believing the arrestee committed a felony and "probable cause" to arrest are synonymous.⁷

The test for probable cause is objective.⁸ It is based upon the existence of credible facts or information that would induce a

person of ordinary caution to believe that the accused committed a crime.⁹ It is also stated that probable cause is a state of facts which, if known, would lead a person of ordinary caution and prudence to believe or entertain a strong and honest suspicion that the person arrested is guilty.¹⁰ The reasonableness of the officer's belief depends on the extent of the information the officer had at the time,¹¹ and the facts and circumstances, known at the time, must be such as to induce a reasonable police officer to make an arrest.¹² Probable cause may be based on information from sources other than personal knowledge, including information from other persons or records,¹³ such as information from another police officer.¹⁴ It is only required that the sources be reliable.¹⁵

An officer need not prove probable cause in the constitutional sense to defeat a false arrest claim; the officer only needs to demonstrate that he or she had a reasonable, good faith belief that the arrest was lawful.¹⁶ A defendant in a false arrest action who has established probable cause for the challenged arrest has no additional obligation to establish good faith;¹⁷ even malicious motives will not support a claim if probable cause is found to exist.¹⁸ Conversely, probable cause does not exist if the person sued for false arrest knew that facts stated to a law enforcement official were false or failed to make a fair, full, and complete statement of the facts.¹⁹ Accordingly, an officer may be liable for unlawful arrest despite a magistrate's authorization where a reasonably well-trained officer would have known that the affidavit on which the warrant was based failed to establish probable cause.²⁰ In other words, an affidavit by a person claiming to have direct knowledge of the incident is not per se probable cause for arrest if there is other information known to the arresting officer at the time that would render it unreasonable to give unquestioning credence to the affidavit's facts or conclusion.²¹ The reliance on the affidavit cannot contradict notions of common sense.²² Thus, the court may look beneath the face of an arrest warrant and inquire into the truthfulness of any supporting affidavit because the Fourth Amendment demands a truthful factual showing of probable cause.²³

There is some authority that "arguable probable cause" gives rise to qualified immunity for a police officer when the officer makes an arrest lacking probable cause.²⁴ Arguable probable cause exists if either it was objectively reasonable for the officer to believe that probable cause existed, or officers of reasonable competence could disagree on whether the probable cause test was met.²⁵ In any case, an officer who cannot establish arguable probable cause necessarily cannot establish probable cause.²⁶

CUMULATIVE SUPPLEMENT

Cases:

Under New Mexico law, an officer who has probable cause to arrest a person cannot be held liable for false arrest or imprisonment, since probable cause provides him with the necessary authority to carry out the arrest. [N.M. Const. art. 2, § 10.](#) [Ganley v. Jojola](#), 402 F. Supp. 3d 1021 (D.N.M. 2019).

[END OF SUPPLEMENT]

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Footnotes

¹ [Scales v. District of Columbia](#), 973 A.2d 722 (D.C. 2009); [Rivero v. Howard](#), 218 So. 3d 992 (Fla. 3d DCA 2017); [Kichnet v. Butte-Silver Bow County](#), 2012 MT 68, 364 Mont. 347, 274 P.3d 740 (2012).

² [Kichnet v. Butte-Silver Bow County](#), 2012 MT 68, 364 Mont. 347, 274 P.3d 740 (2012); [Farrelly v. City of Concord](#), 168 N.H. 430, 130 A.3d 548 (2015); [Shields v. City of New York](#), 141 A.D.3d 421, 35 N.Y.S.3d 330 (1st Dep't 2016).

³ [Spencer v. Connecticut](#), 560 F. Supp. 2d 153 (D. Conn. 2008) (applying federal and Connecticut law); [DeWitt v. District of Columbia](#), 43 A.3d 291 (D.C. 2012).

⁴ [Keen v. Simpson County](#), 904 So. 2d 1157 (Miss. Ct. App. 2004); [Blue v. Harrah's North Kansas City, LLC](#), 170

S.W.3d 466 (Mo. Ct. App. W.D. 2005).

5 Simmons v. Mableton Finance Co., 254 Ga. App. 363, 562 S.E.2d 794 (2002).

6 Roberts v. Goodner's Wholesale Foods, Inc., 2002 OK CIV APP 73, 50 P.3d 1149 (Div. 1 2002).

7 Jenkins v. City of New York, 478 F.3d 76 (2d Cir. 2007) (applying New York law).

8 Scales v. District of Columbia, 973 A.2d 722 (D.C. 2009); Tallman v. State, 13 N.E.3d 854 (Ind. Ct. App. 2014).

9 Mailly v. Jenne, 867 So. 2d 1250 (Fla. 4th DCA 2004); Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005).

As to probable cause for warrantless arrests, generally, see *Am. Jur. 2d, Arrest §§ 32 to 39*.

10 Grainger v. Harrah's Casino, 2014 IL App (3d) 130029, 385 Ill. Dec. 265, 18 N.E.3d 265 (App. Ct. 3d Dist. 2014).

11 Gilles v. Davis, 427 F.3d 197 (3d Cir. 2005); Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005) (not exercise in hindsight).

12 Thomas v. Sellers, 142 N.C. App. 310, 542 S.E.2d 283 (2001).

13 Reynolds v. Menard, Inc., 365 Ill. App. 3d 812, 303 Ill. Dec. 26, 850 N.E.2d 831 (1st Dist. 2006) (store computer system indicated that customers were returning items that they had not purchased, and thus they were guilty of retail theft).

14 Hoyos v. City of New York, 999 F. Supp. 2d 375 (E.D. N.Y. 2013) ("fellow officer doctrine").

15 Dean v. Sanders County, 2009 MT 88, 350 Mont. 8, 204 P.3d 722 (2009).

16 Savage v. County of Stafford, Va., 754 F. Supp. 2d 809 (E.D. Va. 2010), judgment aff'd, 488 Fed. Appx. 766 (4th Cir. 2012) (applying Virginia law); Bradshaw v. District of Columbia, 43 A.3d 318 (D.C. 2012).

17 Welch v. District of Columbia, 578 A.2d 175 (D.C. 1990).

18 Simmons v. Pryor, 26 F.3d 650 (7th Cir. 1993); Phillips v. Allen, 743 F. Supp. 2d 931 (N.D. Ill. 2010), aff'd, 668 F.3d 912 (7th Cir. 2012).

19 Simmons v. Mableton Finance Co., 254 Ga. App. 363, 562 S.E.2d 794 (2002).

20 Small v. McCrystal, 708 F.3d 997 (8th Cir. 2013); Daniczek v. Spencer, 156 F. Supp. 3d 739 (E.D. Va. 2016).

21 Row v. Holt, 864 N.E.2d 1011 (Ind. 2007).

22 Row v. Holt, 864 N.E.2d 1011 (Ind. 2007).

23 Maier v. Green, 485 F. Supp. 2d 711 (W.D. La. 2007).

24 Angevin v. City of New York, 204 F. Supp. 3d 469 (E.D. N.Y. 2016); Ex parte Harris, 216 So. 3d 1201 (Ala. 2016).

25 Angevin v. City of New York, 204 F. Supp. 3d 469 (E.D. N.Y. 2016).

26 Lumpkin v. Brehm, 230 F. Supp. 3d 178 (S.D. N.Y. 2017).

32 Am. Jur. 2d False Imprisonment § 75

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- I. Civil Actions
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- 2. Justification
- c. Arrest Without Warrant

§ 75. Proof of different offense justifying arrest without warrant in civil action for false arrest or imprisonment

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West's Key Number Digest

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A.L.R. Library

[Permissibility under Fourth Amendment of detention of motorist by police, following lawful stop for traffic offense, to investigate matters not related to offense, 118 A.L.R. Fed. 567](#)

According to some courts, probable cause to believe that a person has committed any crime will preclude a false arrest claim, even if the person was arrested on additional or different charges for which there was no probable cause.¹ The probable cause defense does not require that the officer had probable cause to arrest for the specific offense charged.² It is not relevant, therefore, whether probable cause existed with respect to each individual charge, or, indeed, any charge actually invoked by the arresting officer at the time of arrest.³ There is also authority that an officer may rely on an uncharged offense to establish probable cause to arrest, thereby defeating a false imprisonment claim, since probable cause is determined based on the facts and circumstances known to the arresting officer at the time of the arrest,⁴ and the fact that the individual arrested is not tried on the original charge and is later acquitted on a lesser charge is not relevant in the subsequent false arrest or false imprisonment case.⁵ In other jurisdictions, however, a person unlawfully arresting another for one offense may not, when sued for false imprisonment, justify the arrest on the ground that the one arrested was guilty of some other offense for which the arrest, under the circumstances, would have been legal or because reasonable grounds existed for an arrest for another offense.⁶

Where probable cause is lacking to arrest the individual on the original charge, but probable cause does exist to believe the individual committed a different offense proffered by the defense after the fact, the defendant may avoid liability if the consequences to the individual would have been substantially as unfavorable if the person had been arrested on the proper charge.⁷

If an arrest is made for several offenses, justification as to one of the offenses charged is a good defense.⁸

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Footnotes

- ¹ [Gill v. City of Milwaukee](#), 850 F.3d 335 (7th Cir. 2017); [Estate of Lopez ex rel. Lopez v. Torres](#), 105 F. Supp. 3d 1148 (S.D. Cal. 2015).
- ² [Adams v. City of New York](#), 226 F. Supp. 3d 261 (S.D. N.Y. 2016).
- ³ [Johnson v. Burns](#), 2017 WL 1755971 (S.D. N.Y. 2017) (applying New York law).
- ⁴ [Jackson v. City of Abbeville](#), 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005).
- ⁵ [Darrow v. Schumacher](#), 495 N.W.2d 511 (S.D. 1993).
- ⁶ [Santiago v. Fenton](#), 891 F.2d 373 (1st Cir. 1989); [Donovan v. Guy](#), 347 Mich. 457, 80 N.W.2d 190 (1956).
- ⁷ [Etheredge v. District of Columbia](#), 635 A.2d 908, 33 A.L.R.5th 795 (D.C. 1993).
- ⁸ [Sima v. Skaggs Payless Drug Center, Inc.](#), 82 Idaho 387, 353 P.2d 1085 (1960); [Donovan v. Guy](#), 347 Mich. 457, 80 N.W.2d 190 (1956).

32 Am. Jur. 2d False Imprisonment § 76

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d. Justification by Legal Process

(1) In General

§ 76. Justification by legal process in civil action for false arrest or imprisonment, generally

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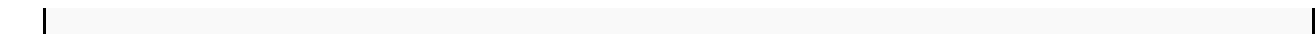
West's Key Number Digest, [False Imprisonment](#)  12

An arrest or commitment by virtue of process that is regular and legal in form, issued by a court, magistrate, or some other authority, and executed in a lawful manner does not constitute false arrest or imprisonment.¹ Valid process is a complete justification² for the acts done in compliance with it. Therefore, the conduct of the arresting officer acting pursuant to it is privileged and a claim will not lie.³ Imprisonment under legal authority is not false imprisonment; that is, false imprisonment claims do not lie for a detention made by virtue of legal process issued by a court or an official with jurisdiction to issue such process.⁴ If a facially valid order issued by a court with proper jurisdiction directs confinement, that confinement is privileged and everyone connected with the matter is protected from liability for false imprisonment.⁵

False imprisonment claims may be precluded by grand jury indictments, raising a presumption of arrest with probable cause,⁶ or by a judgment of conviction.⁷ This is known as the independent intermediary doctrine.⁸ Pursuant to the doctrine, if facts supporting an arrest are placed before an independent intermediary such as a magistrate or grand jury, the intermediary's decision breaks the chain of causation for false arrest, insulating the initiating party; however, this insulation is not absolute, in that the chain of causation remains intact if it can be shown that the deliberations of that intermediary were in some way tainted by the actions of the defendant,⁹ such as failing to present all the facts to the grand jury.¹⁰

Practice Tip:

Because a warrant predicated on grand jury action bars false arrest claims, the plaintiff may be required to proceed instead under a theory of malicious prosecution.¹¹



A cause of action for false imprisonment exists where procedurally void or defective process was secured.¹² A void warrant is not a legal authority, and an arrest pursuant to one can also support a false arrest claim.¹³ Furthermore, liability for false arrest may arise where the offense charged is not a crime¹⁴ as where it amounts to only a civil injury.¹⁵

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Footnotes

- ¹ [Erfani v. Bishop](#), 251 Ga. App. 20, 553 S.E.2d 326 (2001) (procedurally valid process); [Jenkins v. Baldwin](#), 801 So. 2d 485 (La. Ct. App. 4th Cir. 2001).
- ² [Johnson v. Kings County District Attorney's Office](#), 308 A.D.2d 278, 763 N.Y.S.2d 635 (2d Dep't 2003) (out-of-state warrant); [James v. Southwestern Ins. Co.](#), 1960 OK 164, 354 P.2d 408 (Okla. 1960).
- ³ [Brown v. Metro Transit Police Department](#), 87 F. Supp. 3d 145 (D.D.C. 2015), aff'd, 637 Fed. Appx. 3 (D.C. Cir. 2016).
- ⁴ [Mayorov v. United States](#), 84 F. Supp. 3d 678 (N.D. Ill. 2015) (applying Illinois law).
- ⁵ [Holmberg v. County of Albany](#), 291 A.D.2d 610, 738 N.Y.S.2d 701 (3d Dep't 2002). As to execution of process that is fair on its face, see § 80.
- ⁶ [Bernard v. U.S.](#), 25 F.3d 98 (2d Cir. 1994).
- ⁷ [Pete v. Metcalfe](#), 8 F.3d 214 (5th Cir. 1993); [Hanson v. City of Snohomish](#), 121 Wash. 2d 552, 852 P.2d 295 (1993).
- ⁸ [Jennings v. Patton](#), 644 F.3d 297 (5th Cir. 2011).
- ⁹ [Jennings v. Patton](#), 644 F.3d 297 (5th Cir. 2011).
- ¹⁰ [Cuadra v. Houston Independent School Dist.](#), 626 F.3d 808, 262 Ed. Law Rep. 404 (5th Cir. 2010).
- ¹¹ [Bertuglia v. City of New York](#), 839 F. Supp. 2d 703 (S.D. N.Y. 2012) (applying New York law).
- ¹² [Erfani v. Bishop](#), 251 Ga. App. 20, 553 S.E.2d 326 (2001).
- ¹³ [Eiras v. Florida](#), 2017 WL 897305 (M.D. Fla. 2017) (applying Florida law).
- ¹⁴ [Jones v. Perry](#), 128 Misc. 263, 219 N.Y.S. 295 (County Ct. 1926).
- ¹⁵ [Caudle v. Benbow](#), 228 N.C. 282, 45 S.E.2d 361 (1947).

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- d. Justification by Legal Process
- (1) In General

§ 77. Protection of complainant by legal process in civil action for false arrest or imprisonment

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Liability for false arrest or imprisonment under warrant as affected by mistake as to identity of person arrested, 39
A.L.R.4th 705

False imprisonment: liability of private citizen for false arrest by officer, 21 A.L.R.2d 643

Forms

Forms relating to validity of arrest warrant, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\)](#)
[Search Query](#)]

Where a facially valid order issued by a court with proper jurisdiction directs confinement, that confinement is privileged and everyone connected with the matter is protected from liability for false imprisonment.¹ Thus, an arrest warrant protects the person who requested it² and is a complete defense unless the warrant is void.³ There is no claim for false imprisonment

against the complainant if the person arrested does not dispute the validity of the arrest warrant.⁴ A complainant is protected by the magistrate's decision that the complaint and supporting evidence contain sufficient facts to justify issuing a warrant,⁵ even if the complaint was defective.⁶ The complainant is also not liable for false imprisonment resulting from the officer's subsequent act or omission in executing the warrant rendering the arrest illegal,⁷ such as the arrest of the wrong person.⁸ However, a complainant who falsely and maliciously misstates the facts and procures a warrant is responsible for the arrest,⁹ and such misconduct in the procurement of the warrant is not cured by the magistrate's acceptance of the affidavit.¹⁰ A plaintiff may also preclude state immunity by showing that the warrant in question was void because the officer made false statements either intentionally or with reckless disregard for the truth when requesting it.¹¹ One may also be liable in false imprisonment in a case of officious interference or participation in the issuance and execution of the warrant beyond the mere making of the complaint.¹²

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Footnotes

- ¹ [Nazario v. State](#), 24 Misc. 3d 443, 884 N.Y.S.2d 580 (Ct. Cl. 2009), order aff'd, 75 A.D.3d 715, 905 N.Y.S.2d 328 (3d Dep't 2010).
- ² [Gogue v. MacDonald](#), 35 Cal. 2d 482, 218 P.2d 542, 21 A.L.R.2d 639 (1950); [Click v. Parish](#), 89 Ohio App. 318, 46 Ohio Op. 38, 60 Ohio L. Abs. 169, 98 N.E.2d 333 (3d Dist. Hardin County 1950), judgment aff'd, 155 Ohio St. 84, 44 Ohio Op. 96, 98 N.E.2d 293 (1951).
- ³ [Snyder v. U.S.](#), 990 F. Supp. 2d 818 (S.D. Ohio 2014), judgment aff'd, 590 Fed. Appx. 505 (6th Cir. 2014) (applying Ohio law); [Robinson v. Hill City Oil Co., Inc.](#), 2 So. 3d 661 (Miss. Ct. App. 2008).
- ⁴ [Smith v. Stokes](#), 54 S.W.3d 565 (Ky. Ct. App. 2001).
- ⁵ [Traversara v. Pinelli](#), 140 N.Y.S.2d 559 (Sup 1955); [Law v. South Carolina Dept. of Corrections](#), 368 S.C. 424, 629 S.E.2d 642 (2006).
- ⁶ [Sparkman v. Peoples Nat. Bank of Tyler](#), 501 S.W.2d 739 (Tex. Civ. App. Tyler 1973), writ refused n.r.e., (Feb. 27, 1974).
- ⁷ [Burlington Transp. Co. v. Josephson](#), 153 F.2d 372 (C.C.A. 8th Cir. 1946); [McIntosh v. Bullard, Earnheart & Magness](#), 95 Ark. 227, 129 S.W. 85 (1910).
- ⁸ [Nicholson v. Roop](#), 62 N.W.2d 473, 43 A.L.R.2d 1031 (N.D. 1954); [Stork v. Evert](#), 47 Ohio App. 256, 15 Ohio L. Abs. 701, 191 N.E. 794 (6th Dist. Lucas County 1934). But see, [Diaz-Nieves v. U.S.](#), 29 F. Supp. 3d 71 (D.P.R. 2014), where complaint of arrestee and family members claiming execution of valid arrest warrant against the wrong individual sufficiently stated a claim against the United States under the Federal Tort Claims Act for false arrest and false imprisonment under Puerto Rico law. As to police officer's liability for the arrest of the wrong person, see § 85.
- ⁹ [Earl v. Winne](#), 14 N.J. 119, 101 A.2d 535 (1953).
- ¹⁰ [Olson v. Tyler](#), 771 F.2d 277 (7th Cir. 1985).
- ¹¹ [Ruble v. Escola](#), 898 F. Supp. 2d 956 (N.D. Ohio 2012) (applying Ohio law).
- ¹² [Kearley v. Cowan](#), 217 Ala. 295, 116 So. 145 (1928); [Williamson v. Glen Alum Coal Co.](#), 72 W. Va. 288, 78 S.E. 94 (1913).

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I. Civil Actions

D. Defenses

2. Justification

d. Justification by Legal Process

(1) In General

§ 78. Protection from liability in civil action for false arrest or imprisonment where arrest effected on civil process

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A.L.R. Library

[False imprisonment: liability of private citizen for false arrest by officer](#), 21 A.L.R.2d 643

A party who seeks an arrest on civil process is protected by the magistrate's decision to issue the warrant from liability for false imprisonment, even if the magistrate erred in judgment.¹ Thus, a false imprisonment claim may be precluded by a properly issued order for a body attachment² or an order in a civil contempt case.³ However, where a statute forbids imprisonment for debt,⁴ or prohibits the arrest of certain persons under any state of facts, the magistrate does not acquire jurisdiction to issue a warrant for such an arrest, and the party applying for it is liable for any wrongful imprisonment that may follow.⁵ It has also been recognized that a person seized through the issuance of a defective body attachment may have a tort claim against those responsible for its issuance.⁶

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Footnotes

¹ [Nelson v. Kellogg](#), 162 Cal. 621, 123 P. 1115 (1912); [Jastram v. McAuslan](#), 31 R.I. 278, 76 A. 648 (1910).

² [Stern v. Thompson & Coates, Ltd.](#), 185 Wis. 2d 220, 517 N.W.2d 658 (1994).

³ [Dozier v. Dozier](#), 252 Kan. 1035, 850 P.2d 789 (1993) (bench warrant based on a violation of an order incorporating a marital settlement agreement); [Emory v. Pendergraph](#), 154 N.C. App. 181, 571 S.E.2d 845 (2002) (sheriff had no duty to go behind the face of the orders).

⁴ [Dallas v. Garras](#), 306 Mich. 313, 10 N.W.2d 897 (1943).

⁵ [Nelson v. Kellogg](#), 162 Cal. 621, 123 P. 1115 (1912).

⁶ [Leshore v. State](#), 755 N.E.2d 164 (Ind. 2001).

32 Am. Jur. 2d False Imprisonment § 79

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False Imprisonment
John Bourdeau, J.D.

I. Civil Actions

D. Defenses

2. Justification

d. Justification by Legal Process

(1) In General

§ 79. Protection from liability in civil action for false arrest or imprisonment where warrant of commitment issued

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  12

Absent an allegation in the claim, express or inferable, that an order of commitment was invalid on its face or that the issuing entity lacked jurisdiction to issue the warrant, a claim for false arrest and false imprisonment lacks merit as a matter of law.¹ Therefore, a warrant of commitment protects the officer who takes the person into custody under it² and the keeper of the place of incarceration.³

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Footnotes

¹ [Nazario v. State](#), 24 Misc. 3d 443, 884 N.Y.S.2d 580 (Ct. Cl. 2009), order aff'd, 75 A.D.3d 715, 905 N.Y.S.2d 328 (3d Dep't 2010).

² [Smith v. Fish](#), 182 Ark. 115, 30 S.W.2d 223 (1930) (sheriff and bondsman); [Langen v. Borkowski](#), 188 Wis. 277, 206 N.W. 181, 43 A.L.R. 622 (1925).

³ [Nuernberger v. State](#), 41 N.Y.2d 111, 390 N.Y.S.2d 904, 359 N.E.2d 412 (1976) (state was protected against a claim for false imprisonment when its administrative officials acted upon commitment papers issued by a county court, which had some jurisdiction); [Fryerson v. Ohio Dept. of Rehab. & Corr.](#), 120 Ohio Misc. 2d 50, 2002-Ohio-5757, 778 N.E.2d 153 (Ct. Cl. 2002), judgment aff'd, 2003-Ohio-2730, 2003 WL 21234932 (Ohio Ct. App. 10th Dist. Franklin County 2003) (after juvenile court transferred the case, criminal court had jurisdiction to sentence the defendant, and thus there was no cause of action against the state department of rehabilitation and correction for false imprisonment).

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since the department has a statutory duty to maintain custody pursuant to a sentencing order that did not appear to be invalid on its face).

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32 Am. Jur. 2d False Imprisonment § 80

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I. Civil Actions

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2. Justification

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(2) Action of Officers Under Process

(a) In General

§ 80. Protection of officers from civil liability in actions for false arrest or imprisonment where process valid or fair on its face

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  12

Forms

Forms relating to validity of arrest warrant, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\)](#) [Search Query](#)]

An officer is protected and justified in executing process fair on its face—that is, process that is issued by a court, magistrate, or body having legal authority to issue process of that nature, is legal in form, and contains nothing to notify or fairly apprise the officer that it is issued without authority.¹ In other words, an arrest and detention pursuant to a facially valid warrant issued by court of competent jurisdiction is privileged,² and a plaintiff will prevail on a false arrest claim only if a reasonable officer should have known that the information provided to the judge was insufficient to establish probable cause.³ It has also been said that an “invalid warrant fair on its face,” which appears regular in form, but differs from a valid warrant in one or more particulars, creates the same privilege to arrest as a valid warrant for the purposes of a false arrest claim.⁴ Thus, if the process is fair on its face, it does not matter that it is irregular and voidable for that irregularity.⁵ In fact, the court considering a false imprisonment claim looks only to the form of the process by which the arrest warrant was made, and does not determine whether probable cause existed to issue the warrant; if the warrant is valid on its face, the inquiry ends there.⁶

A facially valid warrant generally shields an officer relying in good faith on the warrant from liability for false arrest unless the officer submitted an affidavit that contained statements the officer knew to be false or would have known were false had he not recklessly disregarded the truth and no accurate information sufficient to constitute probable cause attended the false statements.⁷ Thus, when a police officer, acting in good faith, obtains a warrant and acts within its scope, there is no official misconduct even if the arrest turns out to be unlawful.⁸ The officer to whom process that is fair on its face is issued is not required at his or her peril to look behind it.⁹ An officer has the right to assume that the court that issued a warrant acted within its authority,¹⁰ and the officer's liability may not be predicated on defects in the proceedings leading up to its issuance.¹¹ The officer is protected from liability even though it should subsequently appear that the process was erroneously or improvidently issued.¹² Officers are not charged with liability for relatively minor and technical discrepancies in the warrant,¹³ nor will controversy concerning the circumstances of the issuance of the process necessarily impugn the efficacy of the warrant itself.¹⁴ Thus, when the illegal imprisonment is pursuant to legal process which is valid on its face, the defendant cannot be held liable in damages for wrongful detention unless the court issuing the process lacked jurisdiction of the person or the subject matter.¹⁵ This is true even if the warrant was issued erroneously, and a warrant that is merely rubber-stamped with the signature of the issuing authority is valid to confer the immunity allowed for validly issued process.¹⁶

Observation:

When a court speaks of process valid on its face in considering whether it is sufficient to protect an officer from a false imprisonment claim, it does not mean that its validity is to be determined upon the basis of scrutiny by a trained legal mind, nor is it to be judged in light of the facts outside its provisions which the officer may know.¹⁷

Similarly, an arrest pursuant to a body attachment is legally justified, despite errors in the circumstances underlying its issuance, where those errors are not attributable to the party executing the process.¹⁸

If the court has apparent jurisdiction—that is, if it has general jurisdiction of the subject matter and the process is fair on its face—the officer incurs no liability in executing the process, although the court does not have jurisdiction of the person of the defendant.¹⁹ Thus, it is generally held that if a warrant is fair on its face, an officer may not be held liable for taking the defendant into custody, even though it was issued in a proceeding under an unconstitutional statute²⁰ or an invalid ordinance.²¹ There is, however, some authority to the contrary based on a view that an unconstitutional statute protects no one.²²

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Footnotes

¹ *Zeitinger v. Mitchell*, 244 S.W.2d 91 (Mo. 1951); *Romero v. State*, 294 A.D.2d 730, 742 N.Y.S.2d 701 (3d Dep't 2002) (even if the resulting conviction is ultimately reversed).

² *Ali v. City of New York*, 145 A.D.3d 838, 43 N.Y.S.3d 491 (2d Dep't 2016).

³ *White v. City of Chicago*, 829 F.3d 837 (7th Cir. 2016), cert. denied, 137 S. Ct. 526, 196 L. Ed. 2d 408 (2016).

⁴ *Torrez v. Knowlton*, 205 Ariz. 550, 73 P.3d 1285 (Ct. App. Div. 2 2003) (applying Restatement Second, Torts § 124).

⁵ *Robinette v. Price*, 214 Minn. 521, 8 N.W.2d 800 (1943); *Pate v. Stevens*, 257 S.W.2d 763 (Tex. Civ. App. Texarkana 1953), writ dismissed.

⁶ *Martinez v. English*, 267 S.W.3d 521 (Tex. App. Austin 2008).

⁷ *Brooks v. City of Aurora, Ill.*, 653 F.3d 478 (7th Cir. 2011).

8 Olson v. Tyler, 771 F.2d 277 (7th Cir. 1985); Rustici v. Weidemeyer, 673 S.W.2d 762 (Mo. 1984).

9 Lopez v. City of Oxnard, 207 Cal. App. 3d 1, 254 Cal. Rptr. 556 (2d Dist. 1989) (not arresting officer's function to investigate the procedure by which the warrant was issued); Horton v. Chamberlain, 152 Vt. 351, 566 A.2d 953 (1989).

10 DeWitt v. Thompson, 192 Miss. 615, 7 So. 2d 529 (1942).

11 Jackson v. Osborn, 116 Cal. App. 2d 875, 254 P.2d 871 (3d Dist. 1953).

12 Nazario v. State, 24 Misc. 3d 443, 884 N.Y.S.2d 580 (Ct. Cl. 2009), order aff'd, 75 A.D.3d 715, 905 N.Y.S.2d 328 (3d Dep't 2010).

13 Arnsberg v. U.S., 757 F.2d 971 (9th Cir. 1985).

14 Goodwin v. Barry Miller Chevrolet, Inc., 543 So. 2d 1171 (Ala. 1989).

15 Ifill v. State, 149 A.D.3d 1287, 52 N.Y.S.3d 541 (3d Dep't 2017).

16 Nelson v. City of Las Vegas, 99 Nev. 548, 665 P.2d 1141 (1983).

17 Garcia v. City of Merced, 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law).

18 Nooner v. Pillsbury Co., 840 F.2d 560 (8th Cir. 1988).

19 Rush v. Buckley, 100 Me. 322, 61 A. 774 (1905); Brown v. Hadwin, 182 Mich. 491, 148 N.W. 693 (1914).

20 Yekhtikian v. Blessing, 90 R.I. 287, 157 A.2d 669 (1960).

21 Rush v. Buckley, 100 Me. 322, 61 A. 774 (1905).

22 Coleman v. Mitnick, 137 Ind. App. 125, 202 N.E.2d 577, 16 A.L.R.3d 527 (1964).

As to municipal liability for issuance of an arrest warrant for violation of an invalid ordinance, see Am. Jur. 2d, Municipal, County, School, and State Tort Liability §§ 143, 168.

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(2) Action of Officers Under Process

(a) In General

§ 81. Civil liability of officer for false arrest or imprisonment where warrant defective on its face

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West's Key Number Digest

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Forms

Forms relating to void process, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

An arrest pursuant to a warrant that is defective on its face is actionable.¹ In fact, in some jurisdictions, for an action of false arrest to succeed, it must appear that the process used for the arrest was void on its face² in the judgment of an ordinarily intelligent and informed layman.³ Furthermore, a police officer may be presumed to know the law,⁴ including the facial requirements for a valid warrant.⁵ The allegation of the invalidity of the warrant may be express or inferable.⁶

In determining whether a writ or warrant is obviously defective and void on its face, a distinction is sometimes drawn between courts of general and of limited jurisdiction, and it has been ruled that, to be valid, a warrant issued by a magistrate or officer of limited jurisdiction must show on its face that there was jurisdiction of the subject matter, the person, and the process.⁷

An arrest warrant that does not specify the amount of bail, the offense, or the basis for plaintiff's arrest, but which simply

states that the plaintiff is to be arrested and brought before the court for the purpose of setting bail, is not regular on its face within the meaning of a statute immunizing a peace officer from liability for making an arrest pursuant to an arrest warrant regular on its face.⁸ A warrant that recites facts that do not constitute a crime does not justify an arrest pursuant to it.⁹

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Footnotes

¹ [Thompson v. Olson](#), 798 F.2d 552 (1st Cir. 1986).

² [Lawson v. Pennsylvania SPCA](#), 124 F. Supp. 3d 394 (E.D. Pa. 2015) (applying Pennsylvania law).

³ [El Badrawi v. Department of Homeland Sec.](#), 579 F. Supp. 2d 249 (D. Conn. 2008) (applying Connecticut law).

⁴ [Stine v. Shuttle](#), 134 Ind. App. 67, 186 N.E.2d 168 (1962); [Winters v. Campbell](#), 148 W. Va. 710, 137 S.E.2d 188 (1964).

⁵ [Garton v. City of Reno](#), 102 Nev. 313, 720 P.2d 1227 (1986).

⁶ [Nazario v. State](#), 24 Misc. 3d 443, 884 N.Y.S.2d 580 (Ct. Cl. 2009), order aff'd, 75 A.D.3d 715, 905 N.Y.S.2d 328 (3d Dep't 2010) (parole warrant).

⁷ [Burke v. New York, New Haven & Hartford Railroad Co.](#), 267 F.2d 894 (2d Cir. 1959).

⁸ [Allison v. County of Ventura](#), 68 Cal. App. 3d 689, 137 Cal. Rptr. 542 (2d Dist. 1977).

⁹ [Crawford v. Huber](#), 215 Mich. 564, 184 N.W. 594, 39 A.L.R. 1392 (1921) (warrant issued under statute providing only civil remedy); [Williamson v. Glen Alum Coal Co.](#), 72 W. Va. 288, 78 S.E. 94 (1913).

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I. Civil Actions

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(2) Action of Officers Under Process

(a) In General

§ 82. Civil liability in actions for false arrest or imprisonment based on conduct of officer in seeking warrant

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West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  12

A.L.R. Library

[False arrest or imprisonment: entrapment as precluding justification of arrest or imprisonment](#), 15 A.L.R.3d 963

Although actual malice is not an element of a false imprisonment claim in some jurisdictions,¹ and an officer is protected from liability if the officer did not act with actual malice when seeking an arrest warrant,² process, fair on its face,³ affords the arresting officer no protection where the officer is a party or is a complainant in causing the process to be wrongfully issued solely for his or her own benefit.⁴ Thus, officers are not entitled to immunity from an arrestee's false arrest and imprisonment claim where the arrestee alleges that the officers acted with malice in obtaining the warrant with false evidence.⁵ Likewise, an officer who knowingly withholds facts to obtain a warrant may not assert the facial validity of the warrant as a defense.⁶ Rather, that officer must prove to the jury's satisfaction the existence of probable cause to arrest under the circumstances.⁷ The warrant is not an impenetrable barrier to impeaching the officer's affidavit supporting the application for the warrant.⁸

Footnotes

¹ [Boans v. Town of Cheektowaga](#), 5 F. Supp. 3d 364 (W.D. N.Y. 2014) (applying New York law).

² [Anderson v. Cobb](#), 258 Ga. App. 159, 573 S.E.2d 417 (2002).

³ § 80.

⁴ [Hoppe v. Klapperich](#), 224 Minn. 224, 28 N.W.2d 780, 173 A.L.R. 819 (1947).

⁵ [Garcia v. City of Merced](#), 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law).

⁶ [Garcia v. City of Merced](#), 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law); [Bender v. City of Seattle](#), 99 Wash. 2d 582, 664 P.2d 492 (1983).

⁷ [Bender v. City of Seattle](#), 99 Wash. 2d 582, 664 P.2d 492 (1983).

⁸ [Olson v. Tyler](#), 771 F.2d 277 (7th Cir. 1985).

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(2) Action of Officers Under Process

(b) Improper Procedure in Executing Warrant

§ 83. Civil liability of officer in actions for false arrest or imprisonment where improper procedure in executing warrant, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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An officer who acts in an illegal or unauthorized manner in executing a warrant is liable to the person named, even though the writ is valid,¹ and the officer believes that his or her action is within its scope.² Thus, while a reasonable surveillance and restraint of a person whose premises are being searched is not false imprisonment,³ an officer who, while executing a search warrant, wrongfully imprisons the owner of the premises being searched is liable for false imprisonment.⁴ An officer may be liable to the person against whom valid process is executed for failure to make a regular written return to the court of the fact of service.⁵ Similarly, process offers no protection if the officer uses or permits the complainant to use the imprisonment as a means of extorting money or other things from the prisoner or unwarrantably to intimidate or oppress.⁶

The initial privilege of arrest can expire, and justification can end,⁷ and imprisonment following arrest can become unlawful even if an arrest is made pursuant to valid legal process and is thus itself not actionable.⁸

A good faith defense is not available to officers who made an arrest based on an expired warrant that had been previously executed but had not been deleted from the city's computer records.⁹ However, a quashed warrant may still be fair on its face¹⁰ if a copy appeared to be regular in form and thus resulted in an officer being privileged to arrest the person.¹¹

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¹ Schreiner v. Hutter, 104 Neb. 539, 177 N.W. 826 (1920); Gibson v. Holmes, 78 Vt. 110, 62 A. 11 (1905).

² Gomez v. Scanlan, 2 Cal. App. 579, 84 P. 50 (1st Dist. 1906).

³ Harbison v. Chicago, R. I. & P. Ry. Co., 327 Mo. 440, 37 S.W.2d 609, 79 A.L.R. 1 (1931) (holding that otherwise the party could frustrate the search).

⁴ Gomez v. Scanlan, 2 Cal. App. 579, 84 P. 50 (1st Dist. 1906).

⁵ Gibson v. Holmes, 78 Vt. 110, 62 A. 11 (1905).

⁶ McClenney v. Inverarity, 80 Kan. 569, 103 P. 82 (1909).

⁷ Bennett v. Ohio Dept. of Rehab. & Corr., 60 Ohio St. 3d 107, 573 N.E.2d 633 (1991).

⁸ Nelson v. City of Las Vegas, 99 Nev. 548, 665 P.2d 1141 (1983).
As to liability for failing to take a person arrested under a valid warrant promptly before a magistrate, see § 29.

⁹ Jibory v. City of Jacksonville, 920 So. 2d 666 (Fla. 1st DCA 2005).

¹⁰ § 80.

¹¹ Torrez v. Knowlton, 205 Ariz. 550, 73 P.3d 1285 (Ct. App. Div. 2 2003).

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I. Civil Actions

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(2) Action of Officers Under Process

(b) Improper Procedure in Executing Warrant

§ 84. Civil liability of officer in actions for false arrest or imprisonment where failure to produce process or state its contents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A warrant or other process does not protect an arresting officer where there is a duty to produce it or state its contents and the officer does not do so.¹ However, a known or regular officer is not liable for failure to produce or state the contents of process in the officer's possession where the person arrested knows the charge² or resists arrest, thereby precluding an opportunity to ascertain the charge.³

An officer may be required to have a warrant in his or her possession to take advantage of the defense of justification.⁴

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Footnotes

¹ [Anderson v. Foster](#), 73 Idaho 340, 252 P.2d 199 (1953); [Crosswhite v. Barnes](#), 139 Va. 471, 124 S.E. 242, 40 A.L.R. 54 (1924).

² [Martin v. Sanford](#), 129 Neb. 212, 261 N.W. 136, 100 A.L.R. 179 (1935).

³ [Tuck v. Beliles](#), 153 Ky. 848, 156 S.W. 883 (1913).

⁴ [Rustici v. Weidemeyer](#), 673 S.W.2d 762 (Mo. 1984) (trial court erred in directing a verdict in favor of a police officer

on a false arrest claim where officer did not possess the warrant at the time of the arrest).

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I. Civil Actions

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(2) Action of Officers Under Process

(b) Improper Procedure in Executing Warrant

§ 85. Civil liability of officer in actions for false arrest or imprisonment for arrest of wrong person

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West's Key Number Digest

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[Liability for false arrest or imprisonment under warrant as affected by mistake as to identity of person arrested](#), 39
A.L.R.4th 705

Forms

Forms relating to arrest of wrong person, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

The obligation of an officer in executing an arrest warrant has been said to be twofold: to apprehend the person named in the warrant and to avoid interfering with one not involved.¹ There is some authority that an officer who arrests the wrong person

will be liable for false imprisonment, even though the name of the person arrested is the same as or similar to the name in the warrant, unless the arrest is upon the representation of the person taken that he or she is the person named or upon other conduct of the person arrested leading the arresting officer to believe that he or she is the person intended by the warrant.² On the other hand, the view has also been taken that the test of liability is the arresting officer's good faith and reasonable care in ascertaining that the identity of the person arrested matches the one named in the warrant.³ Under this view, the officer will not be liable for false imprisonment for mistaking the identity of the person named in an arrest warrant if the officer exercises reasonable diligence and care in ascertaining the identity before serving the warrant.⁴ The officer is liable, however, for failure to take proper precautions to ascertain the right person if the officer refuses information offered that would have disclosed the mistake⁵ or if the officer detains the person an undue length of time without taking proper steps to establish identity.⁶

Officers are generally found to be immune from liability for arrest of the wrong person if there is a good faith belief that the officer is arresting the correct person and the similarities support that belief,⁷ the error is caused by reasonable reliance on information supplied to the officer,⁸ the erroneous arrest is based upon the similarity of names and other factors,⁹ or the officer justifiably relies on the description of the suspect that is stated on the warrant.¹⁰ An officer is privileged to arrest a person to whom the name in the warrant applies with complete accuracy, although the officer may have reason to suspect that a mistake has been made, and that person, though accurately named, is not the person intended.¹¹ Police officers are also protected if the warrant clearly identified the person arrested such as by also including the suspect's address, even though the person arrested was not the wanted offender.¹² An officer is protected from liability for detaining a person apparently matching the description furnished until the arrested person's identity can be ascertained,¹³ although other aspects of the detention during that period, such as an unnecessarily intrusive search, may form a basis for liability.¹⁴

An arrested person establishes a *prima facie* case of false imprisonment by simply showing that he or she was not the person named in the warrant; the arrest is not privileged unless the arresting officer shows by a preponderance of the evidence that the officer acted reasonably, both subjectively and objectively, in good faith and with due diligence in determining whether the person arrested was the one specified in the warrant.¹⁵ It is a jury question whether an officer used due diligence and reasonably believed that the plaintiff was the person intended by the warrant,¹⁶ and summary judgment dismissing the claim is improper if a jury could come to either conclusion on this issue.¹⁷

An arrest is privileged if the person described in an arrest warrant was arrested, even though the warrant named the wrong person.¹⁸

CUMULATIVE SUPPLEMENT

Cases:

Municipal police officer who assisted another law enforcement officer in arresting individual whose name was very similar to an alias used by individual named on arrest warrant, in reasonable belief that individual was the person named, and who had no involvement in booking or interrogation process or any contact with individual other than for less than three hours in connection with the arrest, was not liable under Michigan law, on false arrest or false imprisonment theory, based solely upon his failure to investigate individual's claims that he was not, as was later proven, the person named in warrant; officer could rely on fact that there was process in place by which it would later be determined whether individual was the person wanted. *Mich. Comp. Laws Ann. § 691.1407(8)(a). Seales v. City of Detroit, Michigan, 959 F.3d 235 (6th Cir. 2020).*

[END OF SUPPLEMENT]

- 1 Wallner v. Fidelity & Deposit Co. of Maryland, 253 Wis. 66, 33 N.W.2d 215, 10 A.L.R.2d 745 (1948).
- 2 Mercado v. Village of Addison, 385 Ill. App. 3d 1006, 325 Ill. Dec. 810, 898 N.E.2d 1089 (2d Dist. 2008) (although not such person, has knowingly caused the officer to believe him or her to be so); *Jordan v. C.I.T. Corp.*, 302 Mass. 281, 19 N.E.2d 5 (1939).
- 3 Davis v. Klevenhagen, 971 S.W.2d 111 (Tex. App. Houston 14th Dist. 1998) (evidence of deputy's good faith relevant to establish official immunity); *Mildon v. Bybee*, 13 Utah 2d 400, 375 P.2d 458 (1962).
- 4 *Mildon v. Bybee*, 13 Utah 2d 400, 375 P.2d 458 (1962).
- 5 *Smith v. Madruga*, 193 Cal. App. 2d 543, 14 Cal. Rptr. 389 (1st Dist. 1961); *State ex rel. Anderson v. Evatt*, 63 Tenn. App. 322, 471 S.W.2d 949 (1971) (elderly person arrested for child abandonment in Georgia; he and his wife insisted he was not the right man and told officers he had never lived in Georgia).
- 6 *Diaz-Nieves v. U.S.*, 29 F. Supp. 3d 71 (D.P.R. 2014) (agents admitted to having doubts about arrestee's identity when he declared his innocence, and then incarcerated arrestee for three days without taking adequate steps to confirm his identity); *State ex rel. Anderson v. Evatt*, 63 Tenn. App. 322, 471 S.W.2d 949 (1971) (elderly person arrested for child abandonment in Georgia; he and his wife insisted he was not the right man and told officers he had never lived in Georgia).
- 7 *Blackwell v. Barton*, 34 F.3d 298 (5th Cir. 1994).
- 8 *Scott v. District of Columbia*, 493 A.2d 319 (D.C. 1985) (computer-generated print of warrant information).
- 9 *Guffey v. State*, 103 Wash. 2d 144, 690 P.2d 1163 (1984).
- 10 *Eslinger v. Shields*, 91 So. 3d 185 (Fla. 5th DCA 2012) (even though crimes that led to issuance of warrants had been committed by person who stole arrestee's identity; warrants contained arrestee's information, including her name, birth date, height, weight, and social security number); *Rustici v. Weidemeyer*, 673 S.W.2d 762 (Mo. 1984).
- 11 *Diaz-Nieves v. United States*, 858 F.3d 678 (1st Cir. 2017) (applying Puerto Rico law).
- 12 *Lopez v. City of Oxnard*, 207 Cal. App. 3d 1, 254 Cal. Rptr. 556 (2d Dist. 1989) (further holding that the sheriff was entitled to rely on a warrant valid on its face, despite other information that the plaintiff was not the person sought); *Dugger v. Off 2nd, Inc.*, 612 S.W.2d 756 (Ky. Ct. App. 1980).
- 13 *Kittredge v. Frothingham*, 114 Me. 537, 96 A. 1063 (1916).
- 14 *Fricker v. Stokes*, 22 Ohio St. 3d 202, 490 N.E.2d 577 (1986).
- 15 *Pierson v. Multnomah County*, 301 Or. 48, 718 P.2d 738 (1986).
- 16 *Craner v. Corbett*, 27 A.D.2d 796, 279 N.Y.S.2d 135 (4th Dep't 1967); *Pierson v. Multnomah County*, 301 Or. 48, 718 P.2d 738 (1986) (officer arrested the plaintiff on a warrant for the plaintiff's twin brother).
- 17 *Robinson v. City and County of San Francisco*, 41 Cal. App. 3d 334, 116 Cal. Rptr. 125 (1st Dist. 1974); *Robinson v. City of Winston-Salem*, 34 N.C. App. 401, 238 S.E.2d 628 (1977).
- 18 *Thomas v. Marion County*, 652 N.W.2d 183 (Iowa 2002) (warrant named suspect's father); *Davis v. City of Syracuse*, 66 N.Y.2d 840, 498 N.Y.S.2d 355, 489 N.E.2d 242 (1985).

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§ 86. Civil liability of officer in actions for false arrest or imprisonment for arrest of wrong person—Identical names

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[Liability for false arrest or imprisonment under warrant as affected by mistake as to identity of person arrested](#), 39 A.L.R.4th 705

Forms

Forms relating to arrest of wrong person, generally, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A warrant does not provide justification where two persons have the same name as that stated in the warrant but the officer arrests the person whom the officer knows is not the one intended or does not in good faith believe the person to be so.¹

However, the officer is justified if the officer in good faith arrests one of two persons having the same name as that stated in the warrant, believing the arrested one to be the person intended.² In these “misnomer” cases where the warrant may be applicable to two or more persons with complete accuracy, the officer is required to exercise reasonable care³ or diligent inquiry⁴ to assure that the correct person was arrested, and the officer has the burden of proving the reasonable execution of the warrant.⁵

If a warrant is issued for a certain person and executed against that person, the officer executing it is not liable for false imprisonment, even though the person who actually committed the offense had the same name as the plaintiff, and the officer doubted that it was the plaintiff who had committed the crime.⁶

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Footnotes

¹ [King v. Robertson](#), 227 Ala. 378, 150 So. 154 (1933).

² [Sanders v. Jacobs](#), 119 Ga. App. 101, 166 S.E.2d 433 (1969) (summary judgment for an officer who arrested a person of the same name and residing at same address as that in the warrant, and there was no other person of that name at that address, even though the person for whom the warrant was intended resided in a different county); [State v. Dett](#), 391 Md. 81, 891 A.2d 1113 (2006) (despite some evidence to the contrary).

³ [Davis v. City of Syracuse](#), 66 N.Y.2d 840, 498 N.Y.S.2d 355, 489 N.E.2d 242 (1985).

⁴ [Wilson v. Bonner](#), 166 Ga. App. 9, 303 S.E.2d 134 (1983).

⁵ [Stewart v. Williams](#), 243 Ga. 580, 255 S.E.2d 699 (1979).

⁶ [Kalish v. White](#), 36 Cal. App. 604, 173 P. 494 (1st Dist. 1918).

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§ 87. Civil liability of officer for arrest of exempt person in actions for false arrest or imprisonment

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A warrant provides no protection if an exemption from arrest is construed to be such an absolute prohibition that the arrest of the exempt person under any circumstances is illegal.¹

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Footnotes

¹ [Nelson v. Kellogg](#), 162 Cal. 621, 123 P. 1115 (1912).

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§ 88. Immunity in civil action of judicial officer for false arrest or false imprisonment, generally

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Forms

Forms relating to immunity, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A judicial officer having jurisdiction of the person and of the subject matter is exempt from civil liability for false imprisonment so long as the judge acts within that jurisdiction¹ and in a judicial capacity, even though the judicial officer may commit an error of judgment.² Immunity is not extended to judicial officers to protect them as individuals but to protect the interests of society on the theory that society is best served if the judicial officer is left entirely free to act upon independent convictions, uninfluenced by fear of personal consequences.³

The protection afforded judicial officers extends only to judicial decisions or acts of a judicial nature and not to mere administrative acts.⁴

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Footnotes

¹ *Bahakel v. Tate*, 503 So. 2d 837 (Ala. 1987) (magistrate issuing warrant); *Temple v. Marlborough Div. of Dist. Court Dept.*, 395 Mass. 117, 479 N.E.2d 137 (1985) (action against district judge based on a temporary mental health

commitment).

² § 92.

³ Bradley v. Fisher, 80 U.S. 335, 20 L. Ed. 646, 1871 WL 14737 (1871); Grant v. Williams, 54 Mont. 246, 169 P. 286 (1917).

⁴ Perkins v. U. S. Fidelity & Guaranty Co., 433 F.2d 1303 (5th Cir. 1970) (applying Alabama law; probate judge immune because committing a person to a mental hospital was not a ministerial act).

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§ 89. Immunity in civil actions of judges of courts of limited jurisdiction for false arrest or imprisonment

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Judicial immunity from liability for false imprisonment extends to judges of courts of limited jurisdiction.¹ It is generally held that judges of courts of limited jurisdiction are exempt from civil liability for their judicial acts in all cases where judges of courts of general jurisdiction would be.²

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Footnotes

¹ [Bahakel v. Tate](#), 503 So. 2d 837 (Ala. 1987) (if judge or magistrate acts in good faith); [Holland v. Lutz](#), 194 Kan. 712, 401 P.2d 1015 (1965).

² [Moore v. Cotton](#), 94 N.H. 387, 54 A.2d 167 (1947); [Kalb v. Luce](#), 234 Wis. 509, 291 N.W. 841 (1940).

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§ 90. Immunity in civil action of judicial officer for false arrest or imprisonment where acting wholly without jurisdiction

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Forms

Forms relating to acting without jurisdiction, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

A judicial officer who causes the arrest or detention of a person in a proceeding in which the officer is acting wholly without jurisdiction may be held liable for false imprisonment,¹ for even honesty of purpose does not justify a clear usurpation of power.² This liability applies with equal force to judges of inferior and superior courts.³ Thus, a justice of the peace is civilly liable for acts that are outside the scope and limits of the justice's jurisdiction, even though made in good faith in the belief that there was jurisdiction.⁴ For instance, a justice who, not having the power to require bond for the appearance of a witness, commits a witness for failure to file a bond is liable for false imprisonment.⁵ Liability may be imposed even where the assertion of jurisdiction might initially have been proper, such as where a judge acts despite having lost jurisdiction of a case after the commencement of the action.⁶ On the other hand, judicial immunity will apply so long as the action is one within the court's colorable jurisdiction;⁷ thus, the defense will be available unless a clear absence of jurisdiction is at once apparent.⁸

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Footnotes

¹ Cox v. Perkins, 299 Ky. 470, 185 S.W.2d 954, 173 A.L.R. 797 (1945); DeWitt v. Thompson, 192 Miss. 615, 7 So. 2d 529 (1942).

² Waters v. Ray, 167 So. 2d 326 (Fla. 1st DCA 1964).

³ Lucas v. Central Missouri Trust Co., 349 Mo. 537, 162 S.W.2d 569 (1942); O'Regan v. Schermerhorn, 25 N.J. Misc. 1, 50 A.2d 10 (Sup. Ct. 1946).

⁴ Cox v. Perkins, 299 Ky. 470, 185 S.W.2d 954, 173 A.L.R. 797 (1945).

⁵ Bates v. Kitchel, 160 Mich. 402, 125 N.W. 684 (1910).

⁶ Lacey v. Hendricks, 164 Ala. 280, 51 So. 157 (1910); Farish v. Smoot, 58 So. 2d 534 (Fla. 1952).

⁷ Utley v. City of Independence, 240 Or. 384, 402 P.2d 91 (1965).

⁸ Colin v. County of Suffolk, 181 A.D.2d 653, 580 N.Y.S.2d 460 (2d Dep't 1992) (family court hearing examiner was entitled to summary judgment dismissing a complaint alleging false arrest and malicious prosecution where the plaintiff failed to proffer evidence demonstrating that the hearing examiner performed any act in the clear absence of jurisdiction); Germeroth v. City of Oregon City, 83 Or. App. 533, 733 P.2d 32 (1987) (while the issue whether a citation, rather than a sworn complaint, could be the basis for the issuance of an arrest warrant was in doubt, a judge was entitled to immunity where he issued warrant in exercise of his jurisdiction over city parking violations).

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§ 91. Immunity in civil action of judicial officer for false arrest or imprisonment where exceeding jurisdiction

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A judge or other officer acting in a judicial capacity and having jurisdiction of the person and the subject matter, who goes beyond or exceeds the court's authority, is not liable for false imprisonment.¹ No exception to this rule is recognized for acts done by a judge of an inferior court in excess of jurisdiction.²

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Footnotes

¹ [Waters v. Barclay](#), 57 Idaho 376, 64 P.2d 1079 (1937); [DeWitt v. Thompson](#), 192 Miss. 615, 7 So. 2d 529 (1942).

² [Allard v. Estes](#), 292 Mass. 187, 197 N.E. 884 (1935); [Stahl v. Currey](#), 135 Ohio St. 253, 14 Ohio Op. 112, 20 N.E.2d 529 (1939).

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§ 92. Immunity in civil action of judicial officer for false arrest or imprisonment where error while acting within jurisdiction

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The rule of judicial immunity protects a judicial officer from liability when acting within the court's jurisdiction, despite an error of judgment.¹ Thus, a magistrate is immune from liability for false arrest for issuing a warrant on the basis of a finding of probable cause, even if the decision was wrong.² There is no liability where a magistrate erroneously demands cash bail instead of a bond,³ or erroneously holds a person for a county grand jury, where the only authority is to hold the person for the federal grand jury.⁴ Similarly, a judge who has jurisdiction may impose a sentence without incurring personal liability, notwithstanding that the facts presented do not support a conviction,⁵ the judge did not first make and enter a finding of guilt,⁶ or the judge did not offer the alternative of paying a fine as provided by an ordinance.⁷

When determining whether notice had been properly served upon an alleged incompetent, a court acts judicially, and even if it is in error, the judge is not responsible for false imprisonment.⁸

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¹ [Waters v. Ray](#), 167 So. 2d 326 (Fla. 1st DCA 1964); [Pogue v. Swink](#), 365 Mo. 503, 284 S.W.2d 868 (1955).

² [Bahakel v. Tate](#), 503 So. 2d 837 (Ala. 1987); [Nelson v. City of Las Vegas](#), 99 Nev. 548, 665 P.2d 1141 (1983).

³ [Gordon v. District Court of Fifth Judicial Dist.](#), 36 Nev. 1, 131 P. 134 (1913).

⁴ [McIntosh v. Bullard, Earnheart & Magness](#), 95 Ark. 227, 129 S.W. 85 (1910).

⁵ Lewis v. Com., 329 Mass. 445, 108 N.E.2d 922, 35 A.L.R.2d 1277 (1952).

⁶ Atwood v. Atwater, 43 Neb. 147, 61 N.W. 574 (1895).

⁷ Berry v. Bass, 157 La. 81, 102 So. 76 (1924).

⁸ Ussery v. Haynes, 344 Mo. 530, 127 S.W.2d 410 (1939).

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§ 93. Immunity in civil action of judicial officer for false arrest or imprisonment where acting without sufficient preliminary affidavit or complaint

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To bring the act of a judicial officer in issuing a warrant within the rule granting immunity for acts done in a judicial capacity, the officer must have issued the warrant on a sufficient affidavit or properly verified complaint.¹ A magistrate is liable for issuing a warrant without the affidavit or complaint² upon an oral statement where a written one is required³ or at the instance of one having no legal authority to make a complaint.⁴

Some decisions support the view that if the affidavit or complaint fails to state any offense, or states an offense not within the court's jurisdiction, the magistrate may be held liable.⁵ In other cases, the courts have held that if the magistrate has general jurisdiction over the offense sought to be charged, the affidavit's or complaint's failure to support the charge fully or correctly will not render the magistrate liable for false imprisonment resulting from issuing a warrant.⁶ All that is required to protect the justice in issuing a warrant is that the evidence produced be colorable, calling upon the justice to act in a judicial capacity in determining the question of probable cause.⁷ If the facts presented by the affidavit or complaint are sufficient to require a judicial determination, the issuance of a warrant on the strength of the affidavit or complaint does not render the magistrate liable.⁸ Some fact or circumstance must appear tending to establish the guilt of the accused, however, and an affidavit showing on its face that it is based on information and belief, which is merely hearsay, is insufficient where it is not accompanied by any positive allegation.⁹

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¹ *Harkness v. Hyde*, 31 Idaho 784, 176 P. 885 (1918).

² Harkness v. Hyde, 31 Idaho 784, 176 P. 885 (1918); McCray v. City of Lake Louisville, 332 S.W.2d 837 (Ky. 1960).

³ Shaefer v. Smith, 92 N.J.L. 267, 106 A. 21 (N.J. Sup. Ct. 1919).

⁴ Goodell v. Tower, 77 Vt. 61, 58 A. 790 (1904) (complaint made by an agent of a society for the prevention of cruelty to animals where a statute authorized a complaint only by an “officer” of the society).

⁵ Vickrey v. Dunivan, 1955-NMSC-006, 59 N.M. 90, 279 P.2d 853 (1955); Minor v. Seliga, 168 Ohio St. 1, 5 Ohio Op. 2d 256, 150 N.E.2d 852 (1958).

⁶ Fletcher v. McMahon, 121 F.2d 729 (App. D.C. 1941); Moore v. Cotton, 94 N.H. 387, 54 A.2d 167 (1947).

⁷ Gardner v. Couch, 137 Mich. 358, 100 N.W. 673 (1904).

⁸ Brinkman v. Drolesbaugh, 97 Ohio St. 171, 119 N.E. 451 (1918).

⁹ McKelvey v. Marsh, 63 A.D. 396, 71 N.Y.S. 541 (2d Dep’t 1901).

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§ 94. Immunity in civil action of judicial officer for false arrest or imprisonment where acting under invalid law

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If the judicial officer has jurisdiction, the fact that the officer is acting under an invalid statute or ordinance usually does not render the judge liable for false imprisonment.¹

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¹ [McDaniel v. Harrell](#), 81 Fla. 66, 87 So. 631, 13 A.L.R. 1333 (1921); [McCray v. City of Lake Louisvlla](#), 332 S.W.2d 837 (Ky. 1960).

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§ 95. Immunity in civil action of judicial officer for false arrest or imprisonment where acting in contempt proceedings

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The exemption of judicial officers from civil liability for false imprisonment applies where the officer, while acting within the officer's jurisdiction, causes the arrest and commitment of a person for contempt.¹ Thus, one committed for contempt by a court of general jurisdiction has no right of action against the judge for false imprisonment, even though the judge acted in excess of jurisdiction and was actuated by malicious motives, and the prisoner was released as a result of habeas corpus proceedings or otherwise.² On the other hand, a judicial officer who is without jurisdiction in the proceeding in which the order of commitment for contempt is made, or is without statutory authority to commit the plaintiff for the alleged contempt, is properly held liable for false imprisonment.³

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¹ [Waters v. Barclay](#), 57 Idaho 376, 64 P.2d 1079 (1937); [Allard v. Estes](#), 292 Mass. 187, 197 N.E. 884 (1935).

² [Waugh v. Dibbens](#), 61 Okla. 221, 160 P. 589 (1916); [Langen v. Borkowski](#), 188 Wis. 277, 206 N.W. 181, 43 A.L.R. 622 (1925).

³ [Harkness v. Hyde](#), 31 Idaho 784, 176 P. 885 (1918); [Jones v. Grooms](#), 56 Ohio App. 351, 9 Ohio Op. 408, 25 Ohio L. Abs. 39, 10 N.E.2d 958 (4th Dist. Adams County 1937).

Works.

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[Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings](#), 30 A.L.R.3d 523

The rule of judicial immunity has been applied as a defense in false imprisonment actions based upon the judge's order of commitment or other involvement in insanity proceedings.¹

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Footnotes

¹ [Perkins v. U. S. Fidelity & Guaranty Co.](#), 433 F.2d 1303 (5th Cir. 1970) (applying Alabama law); [Temple v. Marlborough Div. of Dist. Court Dept.](#), 395 Mass. 117, 479 N.E.2d 137 (1985).

